S. HRG. 100-555

FEDERAL COAL LEASING AND UTILIZATION ACT OF 1987

HEARING

BEFORE THE

SUBCOMMITTEE ON MINERAL RESOURCES DEVELOPMENT AND PRODUCTION

OF THE

COMMITTEE ON ENERGY AND NATURAL RESOURCES UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

FIRST SESSION

ON

S. 1120

TO AMEND THE MINERAL LANDS LEASING ACT OF 1920 TO IMPROVE THE ADMINISTRATION OF THE FEDERAL COAL LEASING PROGRAM, AND FOR OTHER PURPOSES

NOVEMBER 17, 1987

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FEDERAL COAL LEASING AND UTILIZATION ACT OF 1987

TUESDAY, NOVEMBER 17, 1987

U.S. SENATE,
SUBCOMMITTEE ON MINERAL RESOURCES
DEVELOPMENT AND PRODUCTION,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:08 a.m. in room SD-366, Dirksen Senate Office Building, Hon. John Melcher presiding.

OPENING STATEMENT OF HON. JOHN MELCHER, A U.S. SENATOR FROM THE STATE OF MONTANA

Senator MELCHER. The subcommittee will come to order.

Today this subcommittee is holding a public hearing on S. 1120 which is a bill I have introduced to amend provisions of the Mineral Leasing Act of 1920 that deals with Federal coal leasing.

Now, the only significant part of this bill is that we need some changes in the law to facilitate a sound and workable Federal coal leasing program.

Section 7 of the Mineral Leasing Act contains diligent development requirements. Under existing law, a Federal coal lessee holding the lease issued or readjusted after August 3, 1976 must produce coal in commercial quantities within 10 years or the lease terminates.

If we look at where we are in the coal market right now, a flat 10-year requirement for development is just too rigid. So in my bill, we would retain the 10-year diligent development deadline but would allow lessees to extend this deadline for an additional five years by payment of advance royalty or making a substantial investment in the lease and for up to 10 years by doing both; that is, paying advance royalty and making a substantial investment in the lease.

This provision is the same as that reported favorably in the last Congress by the Committee on Energy and Natural Resources after thorough consideration, so it is not that we are plowing so much new ground here as far as this committee is concerned.

We looked at this rather stringently last year in that Congress and decided on provisions for amendments to the Mineral Leasing Act that are pretty much the same as we have now in this bill which I have introduced, S. 1120.

That bill also contains several other provisions to those considered last year. These provisions include exempting lessees who hold mined out coal leases for reclamation purposes from the prohibition on obtaining new leases under section 2A. Eliminating the 40-year mine out requirements for LMUs, as well as providing that noncontiguous lands in a single operation in reasonable proximity to each other can be included in an LMU.

Recent data reflect the state of our domestic coal industry. Preliminary 1986 statistics indicate that both foreign and domestic demand for U.S. coal was down. Coal exports fell by 7.7 percent in 1986, and coal imports reached the highest annual level since 1978.

So if we are going to have a sound coal industry, we need a viable Federal coal leasing program to secure the final outcome of dependable energy supply for our country.

Last year, over 55 percent of the electricity produced in this country was generated from coal. This figure is projected to increase in 1987. As the owner of an estimated 50 percent of this Nation's coal, the Federal Government plays a critical role in the availability of this important resource.

I believe that this bill I have introduced, S. 1120, is a step in the right direction toward improving our Federal coal leasing program, and I look forward to today's testimony.

Our first witness is going to be Congressman Ben Nighthorse Campbell from the Third District in Colorado.

Ben, we are delighted to have you here.

[The text of S. 1120 follows:]

II

100TH CONGRESS
1ST SESSION

S. 1120

To amend the Mineral Lands Leasing Act of 1920 to improve the administration of the Federal Coal Leasing Program, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 1 (legislative day, APRIL 21), 1987

Mr. MELCHER introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

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A BILL

To amend the Mineral Lands Leasing Act of 1920 to improve the administration of the Federal Coal Leasing Program, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) this Act may be cited as the "Federal Coal Leasing and Utilization Act of 1987".

(b) Any amendment or repeal in this Act expressed in terms of an amendment to, or repeal of, a section or other provision of the Mineral Lands Leasing Act, shall be considered to be a reference to a section or other provision of the Act of February 25, 1920, entitled "An Act to promote the

mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain" (41 Stat. 437), as amended.

SEC. 101. Section 2(a)(2)(A) of the Mineral Lands Leasing Act, as amended, is amended by redesignating the existing subsection as subparagraph (i) and by inserting at the appropriate point, the following new subparagraph:

"(ii) Any entity holding a lease or leases issued prior to August 4, 1976, by the United States to coal deposits shall not be subject to the prohibition in subparagraph (A)(i) due to holding such lease where the Secretary determines that all recoverable reserves in such lease have been mined out and the lessee holds such lease solely for the purposes of complying with the applicable requirements relating to reclamation set forth in such lease or in State or Federal law.".

SEC. 102. Section 2(a) of the Mineral Lands Leasing Act, as amended, is amended by inserting the following new subsection:

"(4)(A) Notwithstanding any other provisions of law as to information that may be disclosed, neither the Secretary nor any other officer, employee, contractor or agent of the Department of the Interior or bureau or agency thereof, before lease issuance shall disclose to anyone who is not an employee, contractor or agent of the Department of the Interior or bureau or agency thereof data relating to presale appraisal value and the identification of specific comparable

sales data, if any, used by the Department in estimating coal tract value. This provision against disclosure shall not apply to descriptive data used by potential bidders to prepare bids such as tonnage, British thermal units, stripping rates, or, after a lease is issued, the fair market value estimate.

"(B) Any Federal employee, contractor or agent of the Department, including the Secretary, who willfully violates subsection (a)(4)(A) shall be guilty of a crime and subject to the penalties set forth in section 1905 of title 18, United States Code.".

SEC. 103. (a) Section 2(d)(1) of the Mineral Lands Leasing Act, as amended, is amended by adding after "contiguous" the following: "(except that noncontiguous areas within reasonable proximity of each other and which are determined by the Secretary to be incorporated into a single operation under the effective control of a single operator may also be included in a logical mining unit)".

(b) Section 2(d)(2) of the Mineral Lands Leasing Act, as amended, is amended by striking out "which shall not be more than forty years".

(c) Section 2(d)(7) of the Mineral Lands Leasing Act, as amended, is amended by striking out "the total acreage (both Federal and non-Federal)" and inserting in lieu thereof "the total Federal acreage".

SEC. 104. Section 7 of the Mineral Lands Leasing Act, as amended, is amended to read as follows:

"GENERAL PROVISIONS

"SEC. 7. (a) Each lease shall be subject to the conditions of diligent development and continued operation of the mine or mines, as provided for in subsections 7(b) and 7(c) of this Act, except where operations under the lease are interrupted by strikes, the elements, or casualties not attributable to the lessee, or where the Secretary determines that all recoverable reserves in such lease have been mined out and the lessee holds such lease solely for the purposes of complying with the applicable requirements relating to reclamation set forth in such lease or in State or Federal law. A coal lease shall be for a term of twenty years and for so long thereafter as the condition of continued operation is met. The Secretary shall by regulations prescribe annual rentals on leases. A lease shall require payment of a royalty in such amount as the Secretary shall determine of not less than 12.5 per centum of the value of coal as defined by regulation, except the Secretary may determine a lesser amount in the case of coal recovered by underground mining operations or from special bituminous coal mines which meet the requirements of section 527(a)(1) to (4) or section 527(b) of Public Law 95–87 (91 Stat. 445, 513–514). The lease shall include such other terms and conditions as the Secretary shall determine. Such rentals and royalties and other terms and conditions of

the lease will be subject to readjustment at the end of the primary term of the lease of twenty years and at the end of each ten-year period thereafter if the lease is extended. With respect to a lease issued prior to August 4, 1976, upon the effective date of the first readjustment after the date of enactment of the Federal Coal Leasing and Utilization Act of 1987, the amount of the royalty required to be paid under such lease shall be readjusted automatically by operation of law to a rate of not less than 12.5 per centum of the value of coal for surface mined coal, and to a rate of not less than 8 per centum in the case of coal recovered by underground mining operations or in the case of special bituminous coal mines which meet the requirements of section 527(a)(1) to (4) or section 527(b) of Public Law 95–87 (91 Stat. 445, 513–514).

"Diligent Development

"(b)(1) A lease which is not producing coal in commercial quantities at the end of ten years shall be terminated unless the lessee has either made a substantial investment in such lease or chooses to extend the lease beyond the tenth lease year through the annual payment of diligent development advance royalties based on the production royalty which would otherwise be paid and assessed on assumed annual production of 0.3 per centum of total recoverable reserves.

"(2) A lease which is not producing coal in commercial quantities at the end of fifteen years shall be terminated unless the lessee has made a substantial investment in such lease and chooses to extend the lease beyond the fifteenth year, but not beyond the twentieth year, through the annual payment of diligent development advance royalties based on the production royalty which would otherwise be paid and assessed on assumed annual production of 0.7 per centum of total recoverable reserves.

"(3) The amount of any production royalty paid for any year shall be reduced (but not below the amount payable on one per centum of the recoverable coal reserves under such lease or within such logical mining unit) by the amount of any diligent development advance royalty paid under such lease to the extent that such diligent development advance royalties have not been used to reduce production royalties for a prior year. No diligent development advance royalty paid during the initial twenty-year term of a lease may be used to reduce a production royalty after the twentieth year.

"Continued Operation

"(c) The Secretary of the Interior, upon determining that the public interest will be served thereby, may suspend the condition of continued operation upon the payment of continued operation advance royalties. Such continued operation advance royalties shall be no less than the production

royalty which would otherwise be paid and shall be computed on a fixed reserve to production ratio (determined by the Secretary). The aggregate number of years during the period of any lease for which continued operation advance royalties may be accepted in lieu of the condition of continued operation may not exceed ten. The amount of any production royalty paid for any year shall be reduced (but not below zero) by the amount of any continued operation advance royalties paid under such lease to the extent that such continued operation advance royalties have not been used to reduce production royalties for a prior year. No continued operation advance royalty paid during the initial twenty-year term of a lease shall be used to reduce a production royalty after the twentieth year of a lease. The Secretary may, upon six months' notification to the lessee cease to accept continued operation advance royalties in lieu of the requirement of continued operation.

"Operation and Reclamation Plan

"(d) Prior to taking any action on a leasehold which might cause a significant disturbance of the environment, the lessee shall submit for the Secretary's approval an operation and reclamation plan. The Secretary shall approve or disapprove the plan or require that it be modified. Where the land involved is under the surface jurisdiction of another Federal

agency, that other agency must consent to the terms of such approval."

"Definitions

"(e) For the purposes of the provisions relating to leasing of deposits of coal under this Act the term—

"(1) 'commercial quantities' means 1 per centum of the recoverable coal reserves under lease or within a logical mining unit (LMU);

"(2) 'diligent development' means the production of recoverable coal rserves in commercial quantities;

"(3) 'continued operation' means the productuion of not less than commercial quantities of recoverable coal reserves in each of the first two years following the achievement of diligent development and an average amount of not less than commercial quantities of recoverable coal reserves each year thereafter, computed on a three-year basis consisting of the year in question and the two preceding years; and

"(4) 'substantial investment' means an expenditure of not less than 5 cents per ton of recoverable coal reserves for exploration or planning under the lease or for development and construction of operating facilities in the mine plan area for mining on the lease, or any combination of the foregoing, together with submission of an application for approval of a permit to

mine, issued pursuant to section 506 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1256), containing information addressing each application requirement of the applicable regulatory program administered pursuant to the Surface Mining Control and Reclamation Act of 1977 and containing all information necessary to initiate processing and public review.".

SEC. 105. In determining the amount of payments to States under section 35 of the Mineral Lands Leasing act, as amended, the amount of such payments shall not be reduced by any administrative costs incurred by the United States.

○

STATEMENT OF HON. BEN NIGHTHORSE CAMPBELL, A U.S. REPRESENTATIVE FROM THE STATE OF COLORADO, ACCOMPANIED BY JERRY KEMP, COLORADO-UTE

Mr. CAMPBELL. Thank you, Mr. Chairman, for the opportunity to testify here this morning.

With me is Mr. Jerry Kemp, who is from Colorado-Ute, the largest electrical generating corporation in our district. I have asked him to sit here because there might be some technical questions at the end of my testimony that I am incapable of answering.

The coal industry in our district, in fact in our state, has contributed significantly to Colorado's economy for over 100 years. Coal production has dropped in recent years, however, and the Colorado economy is very sensitive to the dramatic changes in this industry.

In recent years, pre-976 Federal coal leases have been renegotiated at a higher royalty rate. These increases are the result of the BLM's readjustments of old Federal coal lease royalty rates from a fixed cents per ton rate, which was usually 15 to 20 cents per ton, to a minimum of 12.5 percent of the value rate and 8 percent on underground mines.

Total Federal and State royalties in Colorado increased nearly 50 percent in two years, from $13.1 million in Federal Fiscal Year 1984 to $20 million in Fiscal Year 1986, which was a period of declining production.

Colorado as a state may be unique, in that this state supports a reduction in the coal royalty rate to help increase production and help revive the depressed industry. Colorado is willing to reduce its share of coal royalty revenues by $3.5 million a year from the 1986 level of $10 million. This revenue level is about the same as it was in 1984 before many of the pre-976 leases were readjusted.

Colorado does support the discretion of the Secretary of the Interior to reduce royalty rates on a case-by-case hardship basis. This reduction should occur based not only on severe economic hardship but also if the royalty, together with other factors of production, make the resource uneconomical to produce.

Colorado's coal mining industry is enduring severe hardship circumstances. Since 1981, the number of operating coal mines in my district, the Third Congressional District, has dropped from 51 to 19 producing mines.

The number of coal miners employed has dropped from 4,600 to 1,800 during that same amount of time.

This loss of jobs, along with the significant amount of coal going unmined, has been costly to the U.S. Treasury in terms of lower royalty revenues, less income tax revenue and a deepening of the economic depression in the district. It has been estimated that the lost revenues approach $9 million.

Colorado coal costs more to mine. Our coal is relatively thin seamed coal with heavy overburden. A 12.5 percent royalty based on the value added to the coal makes our cost per ton much higher than it is in most other states.

In addition, most Colorado coal is used in Colorado, and Coloradans pay the Federal royalty bill. Most Wyoming and Montana coal, as you know, is shipped to other states.

The issue of Federal coal is a western and especially a Colorado issue. Only about 20 Federal coal leases are located east of the Mississippi River, while there may be 20 or more Federal leases in just one Colorado county.

Many of the coal mining areas in neighboring states were homesteaded before the Federal Government began reserving coal. Much of the coal-producing area in Colorado, particularly in three counties, Moffat, Rio Blanco and Routt Counties, have produced about 80 percent of Colorado coal and was not homesteaded until a later date, leaving much of the coal in Federal hands even though the surface ownerships may be in private hands.

I do not want to leave you with the impression that the prospects for Colorado coal are hopeless, however. Our coal can compete if costs such as royalty costs are contained. First, Colorado coal is good coal. It has a higher Btu and a lower sulfur content than most competing coals.

Even though the production cost of Colorado coal is high, the end price of Colorado coal is competitive with other coals facing higher transportation costs.

The problem is the royalty rate. The royalty rate constitutes a disproportionately high percentage of the total cost of Colorado coal.

My intention is to reinforce the coal mining industry in Colorado with flexible royalty rates which reflect actual economic conditions and with a royalty structure which reflects the true value of the product.

The viable coal industry is one that continues to pay severance and property tax, provides royalty payments and impact mitigation fees, employs our citizens and provides domestic energy resources.

I appreciate your taking my views into consideration as you debate S. 1120.

Thank you, Mr. Chairman.

Senator MELCHER. What effect do you think S. 1120 would have on the development of Federal coal in Colorado if it were enacted into law?

Mr. CAMPBELL. Well, it is hard to say. We have had for the past six years in Colorado an erosion of our coal industry, and at this point I could not tell if it is going to help or not.

I know in the state we have done a number of things to try to prop up the sagging coal industry, including giving bigger exemptions to any State severance taxes at all for our coal. Even with those things that we have done within the state, we have not been able to bring it back to the employment we had six years ago. So it is difficult for me to tell you what the effect would be.

Senator MELCHER. Much of your coal in Colorado is already leased. Would the flexible due diligence requirements in S. 1120 be helpful for coal development in Colorado?

Mr. CAMPBELL. Yes, sir, it would.

Senator MELCHER. Thank you very much, Ben. Thank you for taking the time to come over here. If we are going to move a bill, it is obvious we are going to have to have some feeling in the House that the passage of the bill is essential.

Mr. CAMPBELL. Thank you for your time, Mr. Chairman.

[Subsequent to the hearing Mr. Campbell submitted the following:]

I want to thank you again for the opportunity to appear at the November 17, 1987 hearing on S. 1120 to testify on behalf of the coal industry and consumers in the State of Colorado, and for the opportunity to present the following additional written testimony for the hearing record.

My testimony last week pointed out that the 12 1/2 percent royalty rate unfairly penalizes Colorado coal mines and their consumers, simply because Colorado coal is more expensive to produce.

However, the unfair competitive disadvantage produced by the 12 1/2 percent royalty becomes even more pronounced when low sulfur federal coal is burned by electric utilities who have also invested in sulfur dioxide removal technology.

Those utilities are already doing the utmost that can be done to protect clean air, something that we certainly want to see encouraged. They are burning coal which is already low in sulfur, then spending millions of dollars to further reduce the sulfur dioxide emissions which some believe are precursors of acid rain. Their electric consumers are paying a large portion of their power bill to assure clean air.

Low sulfur federal coal is greatest in value to those utilities which can burn it without the added cost of further sulfur dioxide removal equipment. They already have a cost advantage over their utility competitors in the fiercely competitive wholesale electric market, since they use the same coal, but don't bear the cost of cleaning up the air.

Properly designed, the federal coal royalty program could provide incentives to those utilities which are already cleaning up their emissions to keep doing so, and to entice others to do so. However, the drastic royalty increases which are currently being imposed could cause present users of low sulfur western coal to switch to a lower cost, higher sulfur coal, and discourage its use in new plants. The existing royalty scheme provides no incentive to achieve greater reductions, by using both low sulfur coal and sulfur dioxide removal technology.

In order to remove some of the basic inequities of the percentage royalty, the further disparity in costs between those utilities which control sulfur dioxide emissions and those which do not, and to provide an incentive to clean up the air, I believe that a limited exemption from the full 12 1/2 percent royalty is both appropriate and necessary. An exemption should be given for federal coal with less than 1.0 percent sulfur content, which is burned in electric utility plants using technological methods to further reduce sulfur dioxide emissions.

In order to encourage the continued use of low sulfur federal coal in electric generating plants with scrubbers, and in new plants with scrubbers, it is appropriate to limit the increase in

federal royalty on the low sulfur federal coal burned in such plants to the royalty in effect at the time FCLAA was adopted, adjusted for inflation. This would still allow royalties to keep pace with inflation, and assure a fair return to the federal government, but would eliminate the drastic 10 to 20 fold increases which otherwise would be imposed under existing BLM policies.

This proposed treatment is limited to pre-FCLAA leases because coal producers and purchasers from leases issued after FCLAA knew that a 12 1/2 percent royalty would be required. Mines (and their customers) on pre-FCLAA leases had no knowledge that the 12 1/2 percent rate would be interpreted to apply retroactively to them, and should qualify for the limited exemption I have described.

Federal royalties could play an important role in acid rain reduction, but only if there is some incentive for utilities to choose low sulfur federal coal as their fuel source. I believe the proposal I have described does provide proper incentives, and urge you to adopt appropriate legislation.

Senator MELCHER. Thank you very much.

The next witness is Terry L. O'Connor, Western Regional Counsel, Peabody Holding Company. Mr. O'Connor is located in Denver and is speaking for the National Coal Association and the American Mining Congress.

Would Mr. Lloyd, who is the Secretary, General Counsel and Vice President for Arch Minerals like to come up; and Curtis L. Hoskins, Vice President, Utah Power and Light. We could have the three of you up here at one time.

Mr. O'Connor.

STATEMENT OF TERRY O'CONNOR, WESTERN REGIONAL COUNSEL, PEABODY HOLDING CO., INC., ON BEHALF OF THE NATIONAL COAL ASSOCIATION, AMERICAN MINING CONGRESS AND MONTANA COAL COUNCIL

Mr. O'CONNOR. Thank you, Mr. Chairman. As indicated, my name is Terry O'Connor. I am Western Regional Counsel for Peabody Holding Company, which is the largest coal producer in the United States.

Last year in 1986, Peabody produced approximately 25 million tons of coal in just the western United States, the vast majority of which was produced from Federal and Indian lands in the States of Arizona, Colorado, Wyoming and, of course, in your home state, Mr. Chairman, Montana.

I am appearing here today not just on behalf of Peabody and its operating affiliated companies but also on behalf of the National Coal Association, the American Mining Congress and the Montana Coal Council, of which I am Chairman and President this year.

We certainly appreciate the opportunity to appear and present our views regarding S. 1120 and to express our gratitude to you and your staff for introducing what we think is this most important bill, which would grant some flexibility to the Federal Coal Leasing Amendments Act of 1976.

As we look back upon FCLAA in the 11 years since it has been passed, it has become increasingly apparent to us that FCLAA has created a number of very cumbersome statutory requirements which are ill suited for site-specific circumstances in which flexibility is needed.

While my written testimony goes into a considerable amount of detail regarding these areas of inflexibility where flexibility is needed in order to prevent very onerous results in the coming years and the coming decades, I would like to take this opportunity for a few moments to cite a number of those examples where some fine tuning of FCLAA is needed.

First is the flagship issue which you addressed earlier in your opening remarks, Mr. Chairman, relating to diligent development, which is of great concern to the western coal mining industry.

As you are aware, FCLAA 1976 has two components to diligent development. One is section 3, which has been debated and heard to a great extent in the last few years and which continues to be a problem for many components of the coal mining and energy business but which I will not address today because the record is replete with regard to the issues that surround section 3.

What I would address, though, is section 7 which, as you indicated, is the provision that says that all Federal coal leases must be in commercial quantities, development within 10 years after issuance; otherwise, they will be lost.

We have two principal concerns and problems with this inflexible requirement. The first, as is indicated, is its inflexibility; and the second is that 10 years is simply not enough time. They are two different problems, but they are very interrelated. I would like to address those here for just a couple of moments.

We feel that the concept of diligent development is not something that we oppose in concept if we can get some flexibility and some time extensions built into this.

By way of diversion for just a moment, I understand the administration is also preparing a bill which would grant some flexibility that would be much needed. Either that bill, as I understand it without having read it, or your bill would go a long, long way toward giving us a lot of relief we need in those areas.

We feel that the 10-year inflexible requirement is sort of an improper carryover from the oil and gas industry, where the name of the game there is to get in, get on the lease, drill a well, find out if there is oil or gas in commercial quantities and if there is, develop it, and if not, get off and move on.

Totally unlike the oil and gas industry, the coal industry does not face the problem of attempting to find the reserve. In the case of the coal industry, we all know where the coal reserves and resources are located in this country.

The much more complex trick in the coal industry as opposed to the oil industry is marketing. We certainly do not have the control over market and the ability to market coal in this country to the extent that the oil and gas people do because of the relative shortage of oil and gas versus the relative abundancy of coal.

Because of the complexities and anomalies and varieties of types of coal that are located in this country today, any major coal producer finds that it must develop and retain an inventory of a variety of types, qualities, locations and coals with different characteristics in order to hold those in inventory for an ever-changing coal market.

This is not unusual to the free enterprise system in this country. It is very similar, and I would equate it to the same sort of an inventory development system that would be used in a pharmacy business or that would be used in an automotive parts business or any of a host of a number of other businesses which have to develop some means of holding a modest amount of inventory in order to respond to the market.

With an inflexible and very short diligent development requirement, the ability to develop and retain an inventory system is simply not there.

Because of the 10-year requirement itself and with the passage subsequent to FCLAA of the Surface Mining Control and Reclamation Act, our site-specific experiences now as we look back upon the last 11 years are that, with very unusual exceptions, 10 years is simply not enough to explore, permit, develop, construct and market a coal mine in the western United States. Our experience

has been that at least 12 to 14 years and in many, many cases 15 to 20 years is necessary.

So we applaud your efforts to try to bring some much-needed flexibility into this area in order to give us the relief that we certainly need.

Absent that, it is the industry consensus that while coal development will still continue in the United States and in the western United States, the sad fact of the matter is that there will be virtually a limited if not extinct market for new stand-alone leases in this country because there simply is not enough time to put in the risk that is necessary, perhaps $100 or $150 million, in order to purchase through bonus bidding, go through the whole process and construct a coal mine, only to find oneself having run out of time to have met the 1 percent requirement.

Mr. Chairman, in addition to that issue and in the hopeful event that this Congress does take up some fine tuning of the Federal Coal Leasing Amendments Act, we would also urge that a number of other issues also be addressed which we think are fairly noncontroversial issues but which are issues that are crying for some sort of relief, that are going to create very onerous and unfortunate results not only for the coal industry but also for the utility industry which purchases Federal coal, as well as for the people of this country, none of these onerous results, I think, being contemplated by Congress in 1976 when FCLAA was passed.

Time, of course, does not permit an exhaustive discussion of these, but let me cite just a very few of these in the moments that are still available to me.

Regarding the issue of logical mining units, there are two problems with local mining units that I would like to just mention very briefly in passing.

FCLAA allows the creation of a local mining unit consolidating, if you will, Federal, State and, as appropriate, fee holdings into one unit so that production anywhere in the unit could hold all Federal leases contained within it.

Three criteria must be met to obtain approval of a logical mining unit: It must be a single operation; it must be under the control of a single operator; and the lands must be contiguous.

Now, we have no particular problem with the first two criteria, but the third criteria simply does not take into consideration the realities of site-specific circumstances involving geophysical or geological or surface topographical characteristics that occur on a site-specific basis.

My written testimony cites a case of a problem that we have in northwestern Colorado.

Congressman Campbell was discussing earlier within his district Colorado-Ute Electric Association provides the bulk of the electricity needs for western Colorado.

Peabody Coal Company operates the Seneca Mine in Routt County, which supplies all of the coal to Colorado-Ute's Hayden power plant. This is pursuant to a coal dedication agreement and coal supply agreement signed in the early 1970s, many years prior to FCLAA.

In that, we dedicated three noncontiguous reserves, all of which are in the same general vicinity of each other and all of which are needed by us and by Colorado-Ute in order to provide electricity.

With the law as it now stands, we are faced with a very difficult Hobsen's choice of opening three separate pits, of purchasing very expensive additional materials and equipment in order to open three separate pits, or to put in jeopardy the five Federal leases that are located all in the general vicinity of each other but unfortunately are separated by about a quarter of a mile in two instances from each other, which thus puts in serious question whether or not we can create a logical mining unit.

That is an example which I would be happy to discuss in more detail and which my testimony addresses in considerably more detail.

Another problem with logical mining units is that if a logical mining unit is created, all the coal reserves must be exhausted within 40 years. Now, Mr. Chairman, we think that that could have not immediate but eventual very onerous long-term ramifications.

Let me cite as an example a mine with which you are familiar, our Big Sky mine in Montana. If we were to create a logical mining unit that encompasses both the Federal and fee coal within that area and if at the end of 40 years we have not exhausted all the coal from the Federal lands, even though we have an active ongoing mining operation that employs in excess of 100 people and it certainly has ancillary positive impacts on the Rosebud County coal strip area, what will happen to us at the end of 40 years if that logical mining unit is created?

Under the existing law, it appears to us that the mine would have to shut down. We would lose our existing contracts. Minnesota Power and Light, if they were still purchasing coal from us, would have to look elsewhere for other coal.

We do not think that requiring an ongoing operation to shut down after 40 years is in the best interest of the country or in the best interest of either producers or consumers.

Moving off of the subject of logical mining units, a similar situation regards advance royalty payments. Under FCLAA, advance royalty payments can be made after diligent development production has occurred. Advance royalty payments can be made in order to hold a lease but only for 10 years and, as the administration at least interprets it, advance royalty payments, according to their interpretation, can only be made in the first 20 years of the lease.

Now, we think that both the 10-year limit on the number of payments and, more significantly, the 20-year limitation on paying recoupable advance royalties is arbitrary and can create equally onerous results.

I cite, for example, once again the Big Sky mine. What happens if we for a couple of years are still in production but are not able to mine 1 percent of the reserves after year 20? We fear that the most unfortunate result which would occur in that example would be the loss of the mine reserve, the forfeiture of the leases and the shutdown of the mine.

We do not think that is in the best interests of this country or the operators, and we certainly do not think that this is something that was really contemplated by Congress in 1976.

We have a problem that I will just mention in passing regarding the requirement to submit a resource recovery and protection plan within three years after lease issuance. We find this three-year limit arbitrary, and the very fact that an R2P2 plan is required is really superfluous, given the fact that the Surface Mining Control and Reclamation Act was passed one year after the passage of FCLAA.

Mr. Chairman, we applaud you in a number of these instances in attempting to grant relief and some flexibility regarding these.

One final point that I would like to mention which I preface by saying is not a crisis problem for the coal industry but results in very unfortunate circumstances for the people of this country, and that regards the fact that all too often we are starting to see now instances in which very small unleased Federal coal tracts are being bypassed, in our view unnecessarily.

They are being bypassed because of the time-consuming and cumbersome manner in which the Federal coal leasing process operates under FCLAA. I cite two examples in my testimony, but I will only mention just one in closing here. That relates to our North Antelope mine in Wyoming. That is a mine which has been operating since 1983.

We are producing approximately 6 million tons of coal a year, and the coal is going to Arkansas Power and Light. We have been operating since inception on a State coal lease and will sometime next year exhaust virtually all of the State coal and will move into leased Federal coal to the west of that State block.

Through all of our exploratory drilling, through all of our infield drilling, and all of our attempts to define with specificity exactly where the crop line locates, we have thought all along that the crop line where we are mining would extend just almost to the southern line of the State lease.

This month, as we opened the pit to extract the final coal on the coal lease, much to our surprise, although I will tell you that this is a situation that occurs not infrequently but is a situation which creates most regrettable results, we have found that the coal extends just a little bit beyond where we thought it was. It extends into unleased Federal acreage; not very much, but just a little bit.

Here we now sit at the present day, as of today, Mr. Chairman. The coal is exposed. In the next month we will remove the coal from the State lease. How do we get in to acquire this very, very small tract, just maybe 10,000 or 20,000 tons, of unleased coal that is sitting there exposed, asking for the taking?

Under FCLAA, there are three mechanisms in which to acquire unleased Federal coal. The first is through the regular competitive leasing process. That mechanism is totally unavailable to us because the regional coal team just last week concluded, and I do not think improperly so, that the market is so soft in the west that they will recommend to the Secretary that no Federal coal competitive leasing be conducted until at least 1990. So that mechanism of going through the traditional competitive leasing process is not available.

A second opportunity which in theory would be available would be to seek an emergency bypass lease in order to acquire this energy resource. Unfortunately, because of the cumbersome manner as developed under FCLAA, it takes at least a minimum of one year in which to pick up an emergency bypass lease.

We will need to acquire this reserve in the next month or two months at the very most in order to avoid leaving it in the ground. So an emergency bypass lease is not an option because of the necessity of going through the very long and complicated and cumbersome land use planning process, environmental analysis and very, very tortuous economic evaluation. So that is not available.

The third and final alternative which in theory would be available to us would be through a lease modification procedure. We are finding on an adjacent mine or a shale mine that even under a very fast track as the State Office of BLM is working where there are shale reserves to pick up a lease modification, which is allowed under FCLAA, even that takes a minimum of six to nine months just to get a lease modification.

So the most regrettable fact of the matter is we will be leaving that coal in the ground. It will be lost forever because we will have to bypass it because there is simply not a mechanism available at the field level to go to the State director and obtain an expeditious resolution of the problem.

We would urge that in the event that a coal leasing bill is reported out that perhaps a mechanism to just allow an expeditious treatment of lease modifications for very small acreage, say 20 or 40 acres or whatever, without going through the long, cumbersome and very time-consuming land use planning and economic evaluation process.

I mention all this not because it is such a critical issue to us. We are not going to be hurt by this process because these reserves are so small; but, unfortunately, very valuable energy resources are being left in the ground in far too many cases, resulting in a very regrettable incidence.

Mr. Chairman, I certainly appreciate your patience today in hearing my testimony on the necessity of acting now. The section 7 diligence issue presents an opportunity to redress a number of these, as I indicated earlier, what we think are noncontroversial issues.

We urge the subcommittee to make the needed changes in FCLAA in order to grant the much-needed flexibility which is needed within the Act.

Thank you very much for your time and consideration, and I will be happy to answer whatever questions you might have.

[The prepared statement of Mr. O'Connor follows:]

TESTIMONY OF

Terry O'Connor
Western Regional Counsel
Peabody Holding Company, Inc.

BEFORE THE

Subcommittee on Mineral Resources
Development and Production

Committee on Energy and Natural Resources
United States Senate

ON BEHALF OF

Peabody Holding Company, Inc.
National Coal Association
American Mining Congress
Montana Coal Council

Washington, D. C.

November 17, 1987

Mr. Chairman,

My name is Terry O'Connor. I am Western Regional Counsel for Peabody Holding Company, Inc. Peabody, through its subsidiaries, including Peabody Coal Company and Powder River Coal Company, is the nation's largest coal producer and currently operates seven surface coal mines in the Western United States, which in 1986 cumulatively produced almost 25 million tons of coal, the vast majority of which came either from federal or Indian leases. On behalf of Peabody, I want to express my appreciation for the leadership of this Subcommittee in dealing with the complex issues of federal coal leasing.

In addition to Peabody, I am appearing on behalf of the National Coal Association (NCA), the American Mining Congress (AMC) and the Montana Coal Council, the latter of which I am their current President. The companies represented by NCA and AMC are engaged in all phases of the coal mining business, with extensive operations in the western U.S., Midwest, and the east, including operations on both federal and non-federal lands. We are delighted to be here to give the industry's view on legislation (S. 1120) introduced by you, Mr. Chairman, to deal in a comprehensive and substantive manner with the Mineral Lands Leasing Act of 1920, and in particular, the Federal Coal Leasing Amendments Act of 1976 (FCLAA), which significantly changed the 1920 Act.

Western coal production and, in particular, production from federal coal lands has risen dramatically in recent years. Access to large amounts of low cost western coal is increasingly providing the basis for a more competitive industry. As a result, western coal production also provides a basis for limiting the growth in national energy prices. However, about 80 percent of western coal reserves are owned or controlled by the Federal government. Thus, collectively, the FCLAA and the regulations governing the leasing and management of the federal coal are critical factors affecting whether and at what rate most western coal is produced.

The Atmosphere in 1976

In considering amendments to FCLAA, it may be helpful to review the background leading to its enactment, both in political and economic terms.

In the late sixties, a very large number of federal leases and prospecting permits were issued; over 9 billion tons of federal coal reserves were leased in the years 1965 to 1970. Relatively little production -- some 20 million tons in 1970 -- was occurring from these leases as leaseholders sought new markets for coal that, generally speaking, had far different characteristics than most coals traditionally sold for steam-electric generation. The apparent disparity between the number of outstanding leases and the level of production from those leases created sufficient public concern to bring about a federal coal leasing moratorium which began, in effect, in 1971

but which became official in 1973. However, with the onset of the Arab Oil Embargo, this nation began to place increased emphasis on the use of our abundant coal reserves, and in 1975 the government began to put together a new federal coal leasing program. In this time before the enactment of the Surface Mining Control and Reclamation Act, there was a perception that somehow coal development in the West would be rife with irresponsible mine operation. The reality was quite different. The coal states in the West had already developed their own stringent reclamation requirements and the leaseholders were either in production, waiting the construction of power plants or gasification facilities capable of using the lower Btu-quality coal, or waiting issuance of new federal leases to complete logical mining units in order to market their coal.

It is against this backdrop that FCLAA was enacted. Today, the situation is different. Production from federal leases has steadily increased -- from 55 million tons in 1976 to 164 million tons in FY 1986, but the increase has not been as dramatic as the doomsayers had predicted. New power plant construction has tapered off, and is now almost non-existent and the coal gasification and liquification industries have never emerged. As a result of these factors, the pattern of federal coal lease development over the past decade has been one of tempered, orderly growth. We urge the Congress to review FCLAA in light of today's reality and not of 1976's perception.

Since the enactment of the FCLAA, the coal industry has been intimately involved with the development of various sets of complex and highly technical regulations that have been set forth by the Department of the Interior (DOI) in its several attempts to implement FCLAA. Moreover, the industry has been learning a great deal about the realities of western coal production as well as the marketing of western coal.

Based on this involvement and the deeper understanding of western coal production and marketing, the industry, upon careful reflection, has determined that certain provisions added by the FCLAA to varying degrees: (1) are unnecessary; (2) impact the wrong parties; (3) could cause serious disruption to western coal development both with respect to particular producers and the West in general; (4) may fail to achieve the goals for which the provisions were enacted; and finally, (5) may foster the problems the Act was designed to cure.

Diligent Development

The underlying force behind the FCLAA was its so-called "diligent development" requirements -- requirements that certain actions with respect to federal coal leases take place by a time certain. The heart of the diligence requirements are Section 3 and Section 7 of the 1976 Act. Section 3 precludes the holder of undeveloped coal leases issued before August 4, 1976 from obtaining new federal coal leases after December 31, 1986 so long as the company holds and has held these undeveloped pre-1976 leases

for 10 years. This provision has also been interpreted by the Department of the Interior as precluding the acquisition of any new on-shore federal mineral leases (oil, gas, phosphate, etc.) as long as the company or its affiliates hold coal leases that violate Section 3. Section 7 simply says federal coal leases issued after August 4, 1976 must be in "commercial quantity" production within 10 years or be cancelled.

As you are aware, the Section 3 deadline became applicable on January 1 of this year and leaseholders confronted with the Section 3 prohibition responded based on guidelines developed by the Interior Department. Although Section 3 continues to be problematic for some leaseholders, our remarks today will concentrate on the Section 7 diligence problems.

The coal industry does not object to the principle of a diligent development requirement. However, we believe that a fundamental misunderstanding has developed over time due to the inappropriate, and often times interchangeable, use of the term "diligent development" as applied to oil and gas development and coal development. The problem in oil and gas is one of finding it, and not so much one of developing and marketing. For coal, the problem is reversed. We know where the significant coal reserves are. In fact, before a Federal lease sale is concluded, extensive reserve base analysis is done by both the government and industry. Developing and marketing are the time consuming problems.

Diligent development to assure that government resources are produced on a timely basis makes sense. However, strict requirements for coal lease production by a date certain ignores the very heart of the problem -- finding a market and being able to produce the reserve at a competitive price.

The FCLAA imposed strict development requirements for leases issued after enactment, in large part because of perceived problems with "speculation." It was also aimed at forcing production of abundant domestic energy to substitute for foreign imports. Section 7 was prospective -- either develop a new lease in 10 years or loose it by operation of law. Section 3 was ex post -- either produce from existing leases in 10 years or get out of Federal mineral leasing altogether. Other provisions -- three-year mine plans, 40-year mine out, LMU contiguity advance royalties -- were designed to enforce diligent development of these resources. An all competitive leasing system was also established.

The perceived problem -- speculation -- arose because there existed a large number of federal leases which were not in production. Ironically, most of these leases were issued in the 1960's -- when the western coal industry was still a highly localized and minor source of production -- in an attempt by the Federal government to provide an alternative source of power to natural gas and hydroelectricity to the rapidly growing markets in California and the Southwest. When the market for western

coal did not suddenly appear in response to this flurry of leasing activity, the leasing moratorium was imposed in 1971. Once again federal actions were not successful in accomplishing what only the forces of supply and demand are capable of doing -- providing a market for federal coal.

Yet almost simultaneously with the imposition of the moratorium, market forces reversed, dramatically, leading to the emergence of western coal as an important domestic energy resource. The oil embargo, the demand for a cleaner environment, and the population boom in the West all combined to create a new market, right before our eyes. Western coal production leaped from 35 million tons in 1970 to 111 million tons in 1975 to over 275 million tons in 1982. This production was possible only because adequate supplies were leased in the 1960's.

Accompanying this rapid growth in production was also a profound change in the ownership patterns of federal leases, a subject normally of interest only to economists interested in how markets develop and function. Yet today this is key to understanding the root of the diligence problem. During the 1970's federal leases, by in large, passed from the hands of individuals and land holding companies into the hands of energy producing companies such as those I represent here today. Reserves were assembled, marketed, mines were built, and production was commenced by those whose business it is to produce coal such as Peabody. That process is still very much on going.

The point is that federal coal leases are of interest only to serious producers. The so-called speculator -- who held leases when there was no market -- is gone. Today, there are two groups of lease holders. Some leases are still held by the first group -- individuals and land holding companies -- but these are of little consequence to either the market or public policy. The operation of Section 7 upon lease readjustment assures these leases will eventually be developed or returned to the government.

The other, much larger, group of lease holders are the energy companies as represented here today. These companies hold comprehensively studied and well engineered leases held as reserves for future production from either existing or future mines -- reserves that are as essential in the conduct of the coal mining business, as are inventories of parts for automobile manufacturing. Energy companies do not hold these leases for speculation. That is not our business. They are an essential part of our corporate strategic plan that guides us in our effort to survive and prosper in this highly competitive coal industry.

The coal industry feels that it is imperative that the statute be amended to afford more flexibility in meeting this "diligent development" requirement. In today's circumstances, and for the foreseeable future, an inflexible mandate to achieve full commercial production 10 years after lease issuance is extremely unrealistic.

A review of marketplace and government action over the last eight years clearly evidences that the development and marketing conditions to which coal producers are subjected have changed. Mr. Chairman, there simply is no way to assure that full production on a lease will be achieve in 10 years. The risk of producing reduces the lease value and hence, in the acquisition of federal leases, the risk reduces future revenues to Federal and state governments.

The existing law's artificial timetable presumes an ability to make a perfect match of the coal to be produced with the type, quality and amount of coal being demanded by a coal buyer, at a particular point in time. When a company bids on a lease, it rarely has a customer for that coal. In fact, leases are simply inventories of coal quantity and quality at a location suitable for delivery to potential customers.

Producers need to be able to inventory a sufficient quality of coal reserves, which vary as to location, type and quality of coals, to meet different and often changing buyer requirements. Not all these leases can be put into production immediately. The marketplace will determine which leases will be developed and which will revert back to the lessor.

Mr. Chairman, it generally takes more than 10 years to bring a mine on a federal lease into full production. Testimony presented to this Committee over the last few years has suggested that it often takes anywhere from 12-14 years to develop a large western surface mine.

This effort includes:

1. Development drilling, in order to determine the extent and nature of the coal, its probable mining sequence and production costs for marketing purposes (several months up to 1 year or more);

2. Marketing (an indeterminate amount of time dependent upon a variety of factors);

3. Baseline data gathering for environmental and permitting purposes (a minimum of 1 year);

4. Preparation of the mine plan and permit application (1 to 2 years);

5. Approval of the mine plan and permit application by federal and state agencies (a minimum of 1 year, usually 2 or 3 years, but even more when Environmental Impact Statements are required, as they usually are on federal lands);

6. Final design and construction of the mine (2 years); and

7. Start-up and actual production of coal in commercial quantities, i.e. 1 percent of the recoverable reserves of the lease or

LMU (depends upon the size of the leasehold, can be several years in the case of large reserves).

Let me note some of the more important time consuming environmental protection steps, which for the most part were passed or fully implemented after passage of the 1976 leasing Act:

- The Surface Mining Control and Reclamation Act of 1977 (SMCRA) requires that all mines on Federal lands must submit a very detailed and elaborate mining and reclamation plan that is approved as part of a permit to mine on those lands. The informational and environmental baseline study requirements for the plans are extensive and can require several years of preparation.

- In addition to the permitting requirements set forth in SMCRA and the implementing regulations, there are extensive environmental performance standards that are applicable to all surface mining operations on Federal lands. Those standards insure that all mining operations are conducted in an environmentally sound manner and address such areas as industrial siting, fishing and wildlife, air quality, water quality (both surface and underground), vegetation, soils analysis and postmining land use.

- Because the granting of a permit for a proposed mine on Federal lands is considered a "Federal action" within the meaning of NEPA, an environmental impact assessment or statement will almost invariably have to be prepared.

- Operators on Federal lands are required to comply with the requirements of the Clean Water Act, which requires NPDES (National Pollutant Discharge Elimination System) permit, the Clean Air Act, the Endangered Species Act, and the various archaeological and historic preservations acts.

- Even above and beyond these federal requirements, many states have their own socioeconomic and environmental statutes and regulations governing mining operations within their borders and, pursuant to the states' role under cooperative agreements, they are able to impact coal operations.

Mr. Chairman, there are different approaches to providing flexibility to the now inflexible diligent development requirements of Section 7. Our preferred approach is simply to extend the time period, perhaps an additional 5 or even 10 years through payment of recoupable advanced royalties, an approach adopted by S. 1120. Your bill addresses the problem by providing flexibility in the application of the diligence standard while maintaining a strong incentive to develop the leasehold. Although debate will continue concerning the best type of incentive and the amount of advance royalty, the fact is that some sort of relief is urgently needed. As before, industry stands willing to work with you, Mr. Chairman and members of the

Subcommittee, to develop appropriate incentives that achieve their purpose and yet are reflective of the realities of today's marketplace.

In summary, Mr. Chairman, S. 1120 basically addresses the Section 7 issue in a reasonable and fair manner. Unless Section 7 is changed, I believe there will be little or no industry interest in new, stand alone, federal production tracts. In today's market, management is hesitant to commit tens of millions of dollars to a project that is put at such risk as the 10-year development period poses. It is an arbitrary concept borrowed from oil and gas leasing where the name of the game is to get in, drill the property, and if no discovery is made, move on. Short diligent development periods do not devalue oil and gas leases. For coal, the trick is to produce it and market it at a cost that allows a profit. That can take literally a dozen or more years. It's not hard to find coal. As one who is involved in the marketing side of the coal business, I can assure you that selling it is the trick. S. 1120 provides the flexibility which is essential to attract industry interest in federal coal.

Contiguity of Logical Mining Units

Section 5 of the Federal Coal Leasing Amendments Act of 1976 (Section 2(d)(1) of the Mineral Leasing Act) provides for the establishment of logical mining units (LMUs). This allows for the consolidation of Federal, state, and fee coal properties into a single unit or operating mine, "under the effective control of a single operator". It also requires, almost as an afterthought, that all properties contained in an LMU must be contiguous, or touching.

The concept of contiguity was originally intended to ensure that leases in an LMU would not be separated by great distance, so that production from one remote lease in an LMU could not be credited to other leases in the LMU to satisfy production requirements. Yet in practice, legal separations such as rights-of-way and physical separations such as oxidized or eroded areas of seams and pinchouts, destroy contiguity. The proposed amendment of the contiguity requirement in S. 1120 would permit the formation of LMUs in those situations where, but for the technical requirement of actual touching, it makes economic and geologic sense to mine various properties as a unit. As the definition of an LMU currently exists, however, the desired result of efficient mining may actually be frustrated by this "touching" provision.

As an example, Peabody Coal Company's Seneca mine in Routt County, Colorado, contains six (6) federal coal leases as well as other state and fee properties. However, the mine property is divided into three areas separated only by narrow, quarter-mile wide strips of coal rights which Peabody, for a variety of reasons, does not control. As a result, these three properties may not be able to be incorporated into a single LMU because they technically may be considered noncontiguous. Peabody is

currently producing coal in the area know as "Seneca II" with two walking draglines. In the next few years Peabody plans to move one of the draglines to one of the other areas in order to begin production and thereby comply with the requirements of Section 7. However, to bring the third area of Seneca into compliance within the time frame required by Section 7 is not possible with present equipment. The surface mineable production is dedicated under a long-term coal supply agreement to a mine-mouth power plant owned by Colorado Ute Electric Association and the Salt River Project and the production requirements at the mine do not presently warrant the operation of a third dragline. Further, the addition of a third machine would substantially and negatively affect the economics of the entire mine and power plant. I might add that the properties were obtained and dedicated and the mine was constructed and operating many years before the enactment of FCLAA in 1976.

We are aware that other coal companies do, or will in the future, have similar problems with the present contiguity requirement and accordingly, we support the amendment contained in S. 1120 which would permit non-contiguous properties within reasonable proximity of each other to be included in single logical mining units. Under such an amendment, the non-contiguous properties would remain subject to the "single operator" and "single operation" requirements, yet the Secretary would have the flexibility to approve, where appropriate, the formation of a non-contiguous LMU where geographical or legal anomalies prevent the physical contiguity of the included properties. As a technical matter, we would recommend that the determination of "reasonable proximity" be made by the appropriate BLM State Director inasmuch as virtually all other LMU decisions, including LMU approval itself, are now made by the State Director at the field level.

Operation and Reclamation Plans

A new provision was added to the Mineral Lands Leasing Act by Section 6 of FCLAA, which requires the submission of an operation and reclamation plan within three years of lease issuance. The Interior Department interprets this provision to mean the submission of a plan to demonstrate that the lessee will comply with the requirements of diligent development, maximum economic recovery and resource recovery and protection. Such a plan cannot be designed in any detail until the lessee has a major coal customer, because the plan will need to be tailored to provide for the customer's needs. The lessee may well be lucky to have his exploratory work done to define the coal deposit, and often will not have a customer within three years of lease issuance. Hence, the submission of the required plan will often be a useless and costly endeavor as subsequent market forces dictate other plans and production levels. Mine plan preparation and submission is keyed to the commencement of construction and production and the time required for permit approval, not to the issuance of a lease.

Moreover, the requirement that the plan be submitted within three years is superfluous in light of the detailed mining and reclamation plan that must be submitted under SMCRA.

The amendment proposed in S. 1120 only eliminates the three-year requirement of Section 7(c) of MLLA, as amended. The requirement that the plant be submitted for the Secretary's approval "prior to taking any action on a leasehold which might cause a significant disturbance to the environment" remains in full force and effect. This requirement is in addition to the permit requirements of SMCRA. There is no filing deadline for a mining and reclamation plan, but that plan must be submitted in order to acquire a permit before mining operations can commence. The deletion of the three-year submission deadline would permit lessees to prepare both plans on a contemporaneous basis, after the lessee knows more about his customer's requirements and, hence, about the type of mining operation he will conduct.

Some confusion has arisen over the Mineral Leasing Act terms "mining plan" and "operation and reclamation plan", and their relationship to the permitting process under the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 et. seq. (SMCRA). This confusion has fostered duplicative review of permits on federal lands by the Interior Department and the state regulatory authority under cooperative agreements executed pursuant to SMCRA. To avoid this redundant and time consuming review, we suggest that the legislation clarify the distinct purposes of the mineral leasing term "mining plan" and "operation and reclamation plan" and the SMCRA "reclamation plan" which accompanies a permit application. This can be accomplished by either: (1) substituting the term "mining operation plan" for the terms "mining plan" in Section 2(d)(2) and "operation and reclamation plan" in Section 7(c); or (2) defining the term "operational reclamation plan" to mean the resource recovery and protection plan. This change will make clear that the plan is a requirement for complying with the Mineral Leasing Act and not SMCRA.

Exhaustion of Lease Reserves

The FCLAA also requires that all of the reserves in a logical mining unit be mined within a period not to exceed 40 years (Section 2(d)(1) of MLA). The language of this subsection is not precisely clear, as to whether the 40-year period begins upon issuance of the lease or the establishment of the LMU, but in either case, the requirement is not warranted.

Under Section 7 of FCLAA a lessee, upon attaining production in commercial quantities, must maintain annual production at a level of 1 percent of the recoverable reserves of the lease or LMU, computed on a three-year rolling average. This requirement for continued operation is more than ample incentive to work toward exhaustion of the LMU reserves. The 40-year requirement of Section 2 is therefore extraneous and could create operational and regulatory difficulties. For example, if in the thirtieth

year of an operating LMU it became clear that the operator was not going to exhaust the reserves by the end of the fortieth year, and if the mine plan and the physical facilities would not accommodate the required production, the Secretary may be obligated to withdraw approval of the LMU, perhaps cancel the leases involved, or disapprove extension or renewal of a mine plan. This would occur even though the operator was diligently producing coal and was meeting the obligations for "continued operations". A literal enforcement of this provision could very well result in the premature closure of an active, operating coal mine, the breach of existing coal contracts from that mine, the loss of perhaps hundreds of mine or mine related jobs and the loss of major royalty and severance tax revenues from the federal and state budgets. Thus, the 40-year reserve exhaustion requirement is redundant and unworkable as an incentive to continue producing from the LMU. S. 1120 contains a repeal of this requirement and we urge the Subcommittee's acceptance of that repeal provision.

Acreage Limitation

FCLAA added a new Section 2(d)(7) to the Mineral Lands Leasing Act that limits the size of logical mining units to 25,000 acres. The total acreage would apply to both federal and non-federal lands proposed for inclusion in the LMU. S. 1120 would limit the LMU acreage limitation in Section 2(d)(7) to federal lands only. The industry supports this amendment as it more appropriately focuses the government's interests to those lands with which it has a legitimate concern.

Royalty Rates

Section 104 of S. 1120 would require, for pre-1976 leases, an increase of royalty rates upon readjustment, automatically by operation of law from the lease's cents-per-ton basis to a rate of at least 12.5 percent of the value of coal for surface mined coal and to a rate of at least 8 percent for underground operations and special bituminous mines which meet the requirements of Section 527 of SMCRA.

In 1976, Congress, in FCLAA, required minimum ad valorem rates of 12.5 percent for surface mined coal and 8 percent for underground operations for leases to be issued in the future. FCLAA says nothing about whether the terms governing new leases must apply upon readjustment of pre-1976 leases, and the legislative history sheds little light on the question.

After FCLAA's enactment, the Secretary began taking the position that FCLAA's terms governing new leases must be applied upon readjustment of pre-FCLAA leases, and that he has no discretion to consider the reasonableness of such terms as applied to any particular lease. The coal industry clearly disagrees with the Secretary's position.

Since 1976, this has affected most Federal coal leases which have undergone readjustment. For the vast majority the terms of the readjustment are being appealed to the Interior Board of Land Appeals or are in the early stages of review in various United States District Courts. Peabody, NCA and AMC have recently submitted an amicus curiae brief in support of FMC Wyoming Corporation's petition for certiorari to the Supreme Court of the United States challenging the Secretary's position on readjustment.

Congress has not heretofore and should not now attempt to require automatic readjustment to the FCLAA ad valorem rates, but rather should continue to allow reasonable readjustment of pre-FCLAA leases. Companies invested millions of dollars and entered into long-term contracts, relying on the terms of the pre-FCLAA leases. It would therefore be unfair for the Federal government to attempt to require something more than a reasonable readjustment. The Linowes Commission found that "there are major differences in the economics of coal mining among coal regions in the West" and "that a royalty rate reasonable for one area might not be reasonable for another". Report of the Linowes Commission, Fair Market Value Policy for Federal Coal Leasing 316 (Feb. 1984).

Given that uniform royalty rates were not found reasonable even for new leases, it is patently unreasonable to apply a uniform rate where lessees have already spent millions of dollars and entered into long-term contracts in reliance on lower and more tailored royalty terms.

Accordingly, we urge that S. 1120 be amended by striking the language set forth on lines 5 through 15 of page 5 of the bill (Sec. 104) that mandates that leases "shall be readjusted automatically by operation of law".

More than 400 leases covering some 12.2 billion tons of coal are impacted by this issue. The electric ratepayers who ultimately incur this increased levy are entitled to a complete, unbiased review of the matter in the courts. As such, we urge that this provision be struck.

Advance Royalties

Section 7(b) of MLA provides that the number of years during the period of any lease for which advance royalties may be accepted, in lieu of continued operations, shall not exceed ten. This section also further provides that no advance royalty paid during the initial 20 year term of the lease may be credited against production after the 20th year. We would recommend that both of these arbitrary limitations be removed.

It should be remembered that advance royalties, considered under this provision, are not some minimum $1.00 per acre advance royalty, but are calculated to be the equivalent royalties which would be paid if 1 percent of the recoverable reserves are mined

in any given year. Assuming a 200 million ton reserve, which is selling coal at an average f.o.b. mine price of $10.00 per ton, would result in an annual advance royalty of $2.5 million dollars. The magnitude of these advance royalty payments is such as to create a sufficient incentive to encourage diligent development without the need of the arbitrary ten year advance royalty limitation or the recoupability restriction after the initial 20 year term of a lease.

Even more onerous, however, is that the Interior Department interprets this provision such that advance royalties can only be paid during the initial 20 year period that a federal coal lease is subject to diligence, and therefore, no advance royalty can be paid after the initial 20 year period has expired.

We would urge Congress not only to eliminate the arbitrary ten year limitation on the number of advance royalty payments which may be made and to eliminate the arbitrary 20 year recoupability limitation, but certainly to clarify that advance royalties can be paid after the initial 20 year period to retain a lease in good standing. The failure by Congress to do so could result in the extremely onerous event of an operating mine which has met diligent development, which has had continuous operations production for 20 years, and which then, for whatever reason, is not able to produce coal in commercial quantities, finding itself in the most unfortunate event of being unable to make an advance royalty payment to hold the lease and thus being required to relinquish the lease, breach its existing contracts with its current customers and close the mine, thus terminating the jobs of perhaps hundreds of mine and mine related employees.

- Small Bypass Tracts

As this Committee is aware, FCLAA requires that no federal coal lease may be issued except through competitive leasing and after going through a very detailed and comprehensive land use planning process. The law does allow for emergency bypass leasing and in fact, FCLAA allows for lease modifications of up to 160 acres if such a modification is in the interest of the United States. While this process is expected to work fairly well with regard to the issuance of large tracts, we are finding that the time consuming and complicated land use planning/economic evaluation/competitive leasing process does not work well for the acquisition of very small tracts adjacent to existing operations. Let me explain further by citing two examples.

At our Rochelle Mine in Campbell County, Wyoming, we are mining at an approximately 6 million ton per year rate on a large federal lease which contains in excess of 500 million tons of recoverable reserves. We have suspected for some time that, on the southern fringe of this large reserve, the crop line extends just outside the lease boundary at one isolated point. We have planned for many years, at an appropriate time, to request either a lease modification or a bypass lease in order to acquire what

we estimate to be approximately 7 to 15 acres of unleased coal. Our existing mine plan called for mining adjacent to this lease in a few years. However, due to recent and unexpected customer demands regarding coal quality, a few months ago we found it necessary to make a minor modification to the pit sequences, thus accelerating the time in which we would mine or bypass this small unleased reserve. We applied for a lease modification to acquire this tiny finger of unleased federal coal and the Wyoming BLM Office is working diligently to process the lease modification application. However, despite their diligent efforts, it still appears that approximately 6 to 9 months is needed to complete the lease modification process. If the process takes any longer than March of 1988, we must permanently bypass that tract thus depriving the federal government of any royalties to be derived therefrom, and this valuable energy reserve, albeit very small, will be lost forever. I should point out that obtaining the small reserve in time to mine it will result in no particular advantage to my company because of the magnitude of our existing reserves. We simply hate to see an unnecessary waste of valuable energy resource.

A second example is at our North Antelope Mine, which is also located in Campbell County, Wyoming. We are currently mining on a state lease and plan to move into leased federal reserves in 1988. Despite all of our exploratory and crop line drilling activities which had indicated that the southern portion of the crop line did not extend outside the parameters of the state lease, when we opened the pit and exposed coal last month, we found, to our surprise, that the crop line extends slightly outside the leased boundaries and onto unleased federal coal. Only a few thousand tons of unleased federal coal exist in this area and it would be so easy and simple to extract that small finger, particularly since the pit is open and the coal is exposed. However, because of the long lead times necessary to apply for and obtain a lease modification (6 to 9 months) or even for an emergency bypass lease (a minimum of 1 year), no mechanism appears to exist within FCLAA to obtain the right to mine and remove that valuable energy resource. Thus, regrettably, that small tract of coal will be permanently isolated and lost forever from commercial production.

I cite, for this Committee's consideration, these as examples of a problem which exists, not which creates any major economic crisis for any mining company, but as illustrations in which, if the Mineral Leasing Act could be amended to allow the BLM State Director, in his discretion and in the best interests of the United States, to authorize the mining and removal of very small fingers of unleased federal coal (i.e. tracts smaller than 20 acres), which are adjacent to active mining operations, without going through the very exhaustive process which is now required by law, valuable energy resources would not be lost. Otherwise, without building any flexibility into FCLAA, while the coal operator itself is not disadvantaged, the federal government loses valuable revenues and the states are deprived of coal severance taxes. Most importantly, however, a valuable natural

resource is lost forever because of the cumbersome and time consuming manner in which federal coal acquisitions must be made.

Conclusion

Mr. Chairman, I want to conclude my statement by reiterating a few basic points that we believe are pertinent to this hearing. First, there are numerous provisions of FCLAA which are no longer appropriate to the realities of the coal leasing program and to the current coal market; they may not have been appropriate even in 1976. The necessity of acting now on the Section 7 diligence issue presents an opportunity to redress those inappropriate and unnecessary provisions, and we urge the Subcommittee to make the needed changes and deletions to the Act in this Congress.

Finally, we believe the Subcommittee should be cognizant of the effect of subsequently-enacted laws, notably SMCRA, which render some of the provisions of FCLAA needless and duplicative. In this context, we believe FCLAA can be amended without any detriment to the environment or the management of the public's resources.

Mr. Chairman, this concludes my statement. I would be happy to respond to any questions you or other members of the Subcommittee may have.

Senator MELCHER. Thank you, Mr. O'Connor.
We will now hear from Mr. Lloyd.

STATEMENT OF THOMAS R. LLOYD, SECRETARY, GENERAL COUNSEL AND VICE PRESIDENT FOR GOVERNMENTAL AFFAIRS, ARCH MINERAL CORP., ACCOMPANIED BY BLAIR M. GARDNER, COUNSEL

Mr. LLOYD. Good morning, Mr. Chairman. My name is Tom Lloyd. I am the Secretary, General Counsel and Vice President responsible for governmental affairs at Arch Mineral Corporation.

With me this morning is Blair Gardner, an attorney who works with me in St. Louis. In case I say something dumb, the brains of the operation might be able to correct that or answer any questions should I not be able to.

Arch is a St. Louis headquartered company. We are privately owned, with 50 percent of our shares held by Ashland Oil, Inc. and 50 percent held by interest of the Hunt family of Dallas, Texas. Through various operating subsidiaries, we mine coal in Wyoming, Illinois, Kentucky and West Virginia. Our only line of business is the production and sale of coal.

We have been particularly interested in S. 1120 because of our mining operations in Carbon County, Wyoming. It is an area in the southern part of the state known as the Hanna Basin. An Arch subsidiary operates the Seminoe II coal mine there, and we also operate Medicine Bow coal mine through a joint venture with Union Pacific Resources.

We are pleased with the subcommittee's invitation to testify this morning, and we hope that our comments may prove useful in your continuing deliberations.

Before I begin my substantive remarks, I would like to endorse Terry O'Connor's comments on behalf of Peabody. As does Peabody, we believe that the Federal Coal Leasing Amendments Act addressed a perceived problem which, even if you assume its earlier validity, ceased to exist at the time of FCLAA's passage in 1976.

This morning, however we wish to focus our testimony on a specific provision of S. 1120. This appears on pages 4 and 5 of the bill at section 104. It was introduced in a previous version, S. 2427, by Senator Wallop of Wyoming. That was with Arch's support and encouragement.

We endorse this amendment because we believe that this provision would redress a significant problem for our Wyoming operations created by FCLAA. The problem also affects other similarly situated surface mining operations and reserves held under Federal coal leases.

Arch began development in Carbon County in late 1971. The Hanna Basin is in the south central part of the state along the main line of the Union Pacific Railroad. We shipped our first coal out of our Seminoe II mine, our current principal operating mine, in October 1972. The price was then about $4 a ton at the mine.

Our first Federal coal production carried a royalty ranging from 15 to about 17.5 cents per ton. This was a percentage royalty between 3.5 to 4.1 percent.

We have been in constant operation in Carbon County since 1972, but events in the 1970s increased our operating costs; hence, the prices we have to charge for our coal.

First, the State of Wyoming significantly increased the burden of its severance and ad valorem taxes. When we began operating in the early 1970s, severance and ad valorem burden was around 8 percent. Until Wyoming voted a temporary tax reduction earlier this year, this burden had risen to about 17.5 percent.

Second, the passage of the Federal Surface Mining Control and Reclamation Act of 1977 had a dramatic increasing effect on reclamation costs. The State of Wyoming had a reclamation statute in place prior to SMCRA, but the Federal statute is far more burdensome than anything we had experienced earlier.

Despite the enormous cost of compliance, we believe we have successfully demonstrated that coal can still be mined in the semi-arid region of Wyoming with minimal effects on the environment.

Third, FCLAA greatly increased the royalty burden on coal production. From the 15 to 17.5 cents per ton rates that I mentioned earlier, our leases have been readjusted under FCLAA and now carry a 12.5 percent royalty on the gross sales price. This amounts to over $2 per ton currently on our main contract.

Fourth and finally, general inflation has also raised our cost of mining and is reflected in the price of our coal and, thus, our royalties. All these factors can be seen in a graph appended to my remarks and labeled 1986 702 Mine Costs.

In reviewing that graph, please note that the reclamation costs, royalties and the general tax burden have all increased much more acutely than our operating costs over the 13-year period reflected on that graph.

It is also significant that in the 1970s we began to experience competition from new production sources that were not there in 1971. For example, large scale Powder River Basin producers opened mines in Montana and Wyoming. Many of these operate under geologic conditions which are extremely favorable when compared with the coal seams in the Hanna Basin.

We operate where geologic phenomena have tilted the seams up to angles of 15 degrees from the surface terrain. The equipment we use to remove the overburden, the strata above the coal, can make only a limited number of cuts in a pit, normally three, before the ratio of overburden to coal removed becomes uneconomical. We can only move *x* amount of dirt to get a ton of product.

It is important to understand this distinction in the geologic features of the area where we produce in Wyoming compared to other western reserves. Hanna Basin coal has a higher heat value than many other western reserves, but even this desirable characteristic has not been sufficient to sustain its marketability in light of the adverse cost effects which I have described. These are explained in the graph labeled Comparative Cost Analysis, also appended.

This combination of factors—generally increased western coal production and new legal impositions—were felt by Arch in the early 1980s. As expressed in the two last graphs labeled Production and Job Trends in Wyoming, while overall coal production has generally increased in Wyoming, both employment and production

have dropped steadily in southern Wyoming in the five-year period between 1981 and 1986.

Of the four producing coal mines in Carbon County that were operating in 1981, two have suspended operations indefinitely. That is our Medicine Bow coal mine and the Carbon County Coal Company mine, now part of Cyprus Mills.

Two other Hanna Basin mines are still in operation. Even with these declines, however, Arch still remains the largest private employer in Carbon County, with a total payroll of about 120 people.

We have survived in the Hanna Basin over the last two years for essentially three reasons. First, we have significantly lowered the cost of operating our mines. This has been done in part by reducing to a minimum the number of management personnel at the mines, raising their salaries, and improving the productivity of our operating equipment.

Second, we negotiated a wage and benefit reduction with our hourly employees. Regrettably, this resulted in a two-month labor dispute in the fall of last year. It was unfortunate that we had to cut people's pay, but it has been the single most significant factor in keeping our mines in operation.

Third, in the 1987 session of the Wyoming legislature, a temporary severance tax reduction was enacted. This sets a maximum severance tax of 80 cents per ton on new coal sales contracts entered between April 1, 1987 and April 1, 1989. The state recognized the plight of its coal industry. The bill enjoyed bipartisan support in both houses of the Wyoming legislature and the endorsement of Governor Mike Sullivan.

While we have petitioned the Department of the Interior for relief from FCLAA's royalty rates as permitted under the statute, the Department has steadfastly interpreted FCLAA as requiring a minimum 12.5 percent royalty on the coal mine at our surface operations.

This 12.5 percent royalty is imposed at the time a new Federal coal lease issues or upon readjustment. Federal coal mined by underground methods carries a royalty between 5 and 8 percent as determined by regulations promulgated by the Department.

The provision of S. 1120, which we ask the committee to consider, would impose this underground royalty rate for mines with geologic conditions such as ours in southern Wyoming.

This mechanism is not new to Federal legislation. It exists in section 527 of SMCRA. The provision is sometimes referred to as the special bituminous coal mine section.

Essentially, it grandfathers certain mines for meeting some of the environmental reclamation standards of SMCRA. Arch's two Hanna Basin mines share with these exempted mines the geologic conditions I described earlier. Arch wishes to emphasize, however, that we are not seeking or endorsing any lessening of the environmental performance standards of SMCRA. S. 1120 would have no such effects.

Although it is an exaggeration to characterize the current 12.5 percent Federal royalty as the principal factor for the loss of production in the Hanna Basin, it is certainly a contributing cause. As we have explained this morning and as our graphs illustrate, a variety of factors have adversely affected our operations since the

1970s. The economic effects of the statutes in question were perhaps unintended, but they are equally undeniable.

Everyone who has a stake in the success of our operations—our employees, the State of Wyoming, and Arch—have all accepted a diminished economic return in an effort to restore the productive capacity and the financial viability of our southern Wyoming operations. The Federal Government has so far refused to agree to any such changes.

The so-called special bituminous provision of S. 1120 may appear to some to be special interest legislation. It is no such thing. The economic problems faced by Arch and other southern Wyoming coal producers were in part created by FCLAA. We believe that this was an unintended effect based upon a presumption that western surface mine deposits are all alike. They are not.

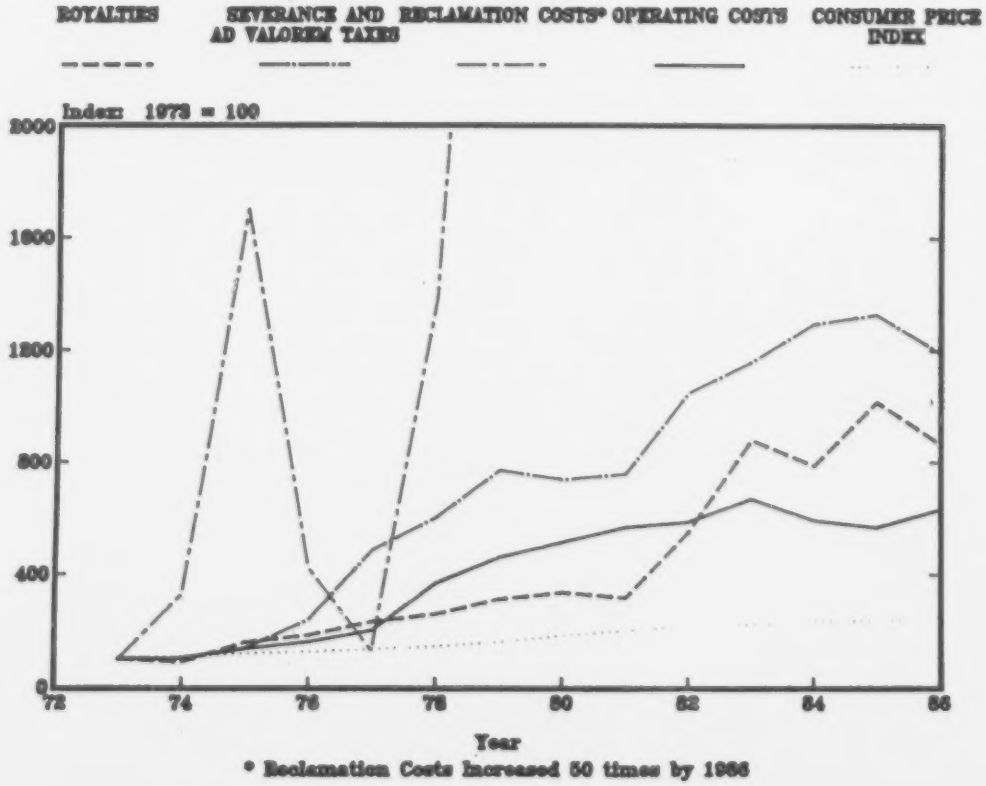
As SMCRA recognized, not all western coal deposits are the same for environmental purposes. We are here today before you to correct the inaccurate assumption made with FCLAA's passage that all western surface coal deposits are the same for royalty purposes.

We appreciate the opportunity to discuss this matter with the subcommittee. I will now attempt to answer any questions you might have on the issues I have raised.

[Attachments to the prepared statement of Mr. Lloyd follow:]

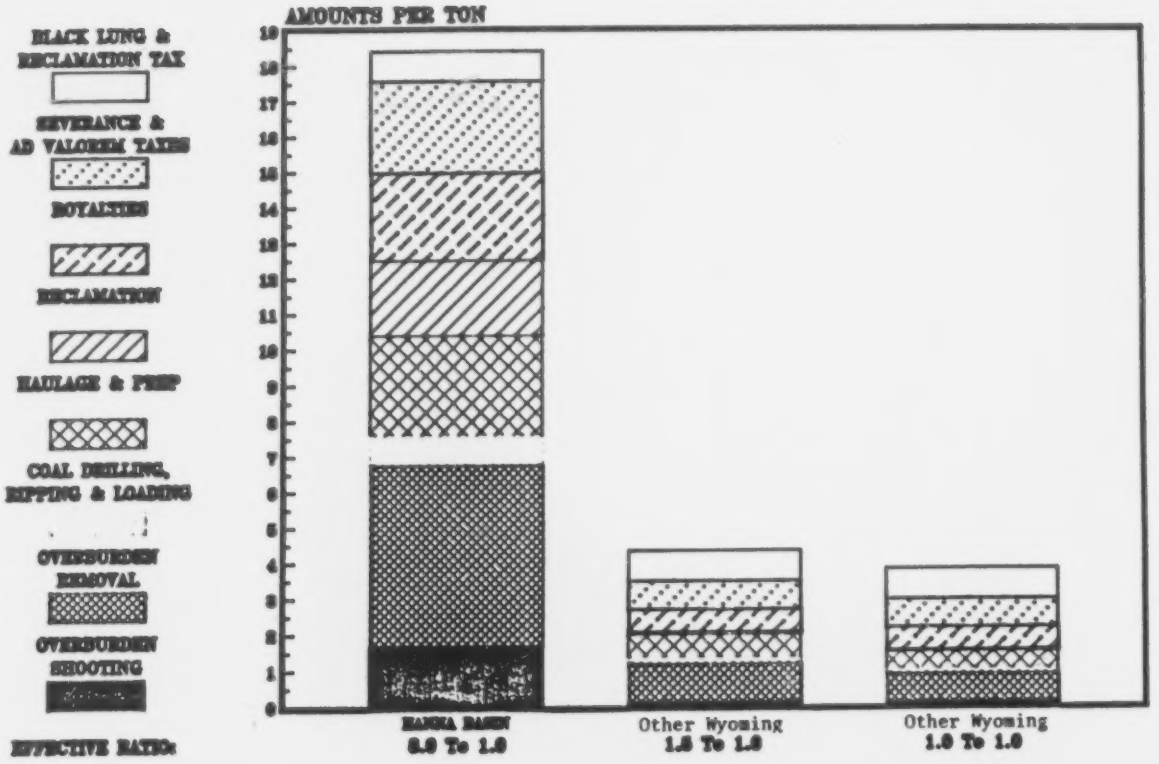
1986 SEMINOE II MINE COSTS

Comparative Production Cost Trends



* Reclamation Costs increased 50 times by 1986

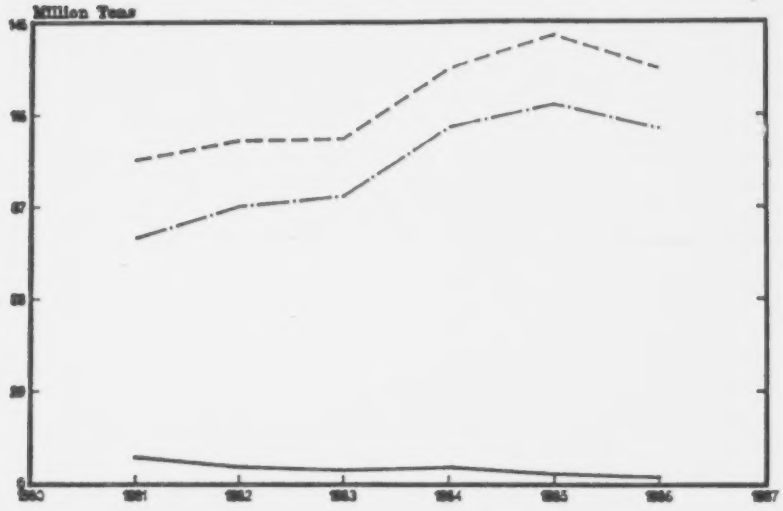
COMPARATIVE COST ANALYSIS
BY FUNCTION



PRODUCTION AND JOB TRENDS IN WYOMING

WYOMING PRODUCTION BY SELECTED AREAS: 1981 TO 1986*

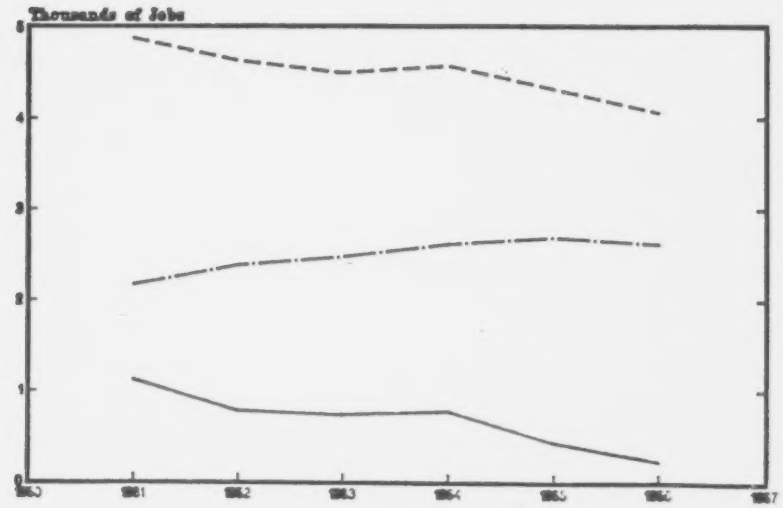
Total Wyoming — Carbon County — Other Wyoming



*Note: 1986 Estimated on the Basis of Three Quarters of Data

WYOMING PRODUCTION EMPLOYMENT BY SELECTED AREAS: 1981 TO 1986*

Total Wyoming — Carbon County — Other Wyoming



*Note: 1986 Estimated on the Basis of Three Quarters of Data

Senator MELCHER. Thank you, Mr. Lloyd.

Before any questions, we will hear from Mr. Hoskins of Utah Power and Light.

STATEMENT OF CURTIS L. HOSKINS, EXECUTIVE VICE PRESIDENT, UTAH POWER & LIGHT CO., ACCOMPANIED BY BRAD HARVEY

Mr. HOSKINS. Thank you, Mr. Chairman. My name is Curtis L. Hoskins, Executive Vice President of Utah Power and Light.

With me today to help answer questions is Brad Harvey, who is the principal executive in charge of Utah Power and Light lines.

Mr. Chairman, we, too, appreciate the flexibility in S. 1120 and think it is a step in the right direction towards sound royalty policy. The government does deserve fair revenues and royalties on the property that it does own.

I have a brief prepared statement that will address one area of concern in that bill. Utah Power and Light is an investor-owned electric utility that provides service to over 500,000 customers in a 90,000 square mile service territory covering most of the State of Utah and portions of Idaho and Wyoming.

The company owns three underground coal mines in Emery County, Utah. We have the largest underground coal mine operation west of the Mississippi. Coal is the primary source of fuel for over 95 percent of the company's generation requirements.

I appreciate the opportunity to appear here today, Mr. Chairman, and express concern on behalf of UP&L about one provision of S. 1120 as now proposed. This provision would lock in an inequitably high underground coal royalty cost and, therefore, would:

Number one, discriminate against owners of Federally controlled leases for deep mined coal;

Number two, unfairly increase electricity rates to the citizens that we serve; and

Number three, adversely affect UP&L's ability to compete in an already tight and difficult energy market.

S. 1120 would remove the discretion now granted under law to the Secretary of the Interior to reduce the royalty rate for underground mining from 8 percent to 5 percent under warranted conditions. We respectfully request that this committee eliminate this feature of the bill and leave such discretion as provided under current law. I would like to explain my rationale.

It appeals to my sense of fairness that it is more appropriate to establish a royalty policy that would provide royalty cost per ton of coal produced in deep mines to be generally equivalent to royalties per ton for surface mines.

Present law provides discretionary authority for the Secretary of Interior to adjust royalties for deep mined coal on a more equitable basis. To illustrate, assume a typical deep mine cost per ton of $30. Applying the 8 percent royalty rate produces a royalty cost per ton of $2.40. Compare this to a surface mine cost assumption of $8 and a royalty rate of 12.5 percent. This produces a surface mine royalty of $1 per ton.

Because of this obvious disparity, the present law allows for modification under warranted circumstances for the Secretary of

Interior to reduce the 8 percent deep mine rate to as low as 5 percent.

Even the 5 percent rate results in a heavier royalty burden for underground coal generally in our situation; in other words, $1.50 per ton compared to the $1 per ton for the surface mine under this illustration.

Now, we see no reason why some citizens of this country should carry a 2.5 times heavier royalty burden than others simply because geologic happenstance has buried some coal seams deeper than others.

In Utah, mining employment has declined from 3,626 workers in 1982 to 1,981 workers in 1986, a 46 percent reduction. Unemployment in Utah's coal producing counties is at a very high level. Additional royalty costs would further weaken the already fragile Utah coal industry. Mining provides employment in areas of Utah where there is very little alternative economic base.

I have attached Exhibits 1 and 2 to my testimony to demonstrate graphically the marginal nature of Utah coal industry. The exhibits generally show that the underground coal cost per ton based on 8 percent royalty would impair our ability to sell power to other markets and also may have an adverse impact on mining employment as well as other economic consequences.

It is not UP&L's intention to seek a reduction in royalty rates to compete against and displace coal and coal miners elsewhere in this Nation. Our market traditionally has been our own power plants. In fact, to the extent the royalty burden has lessened for UP&L, that reduction in cost is passed directly to the customers of Utah Power & Light. Shareholder profits are not increased.

In conclusion, I hope that this committee will consider the issues of economics and fairness that I have raised and will revise S. 1120 to permit the Secretary of Interior to continue to have the latitude to reduce royalty rates on deep mined coal as deemed appropriate and as provided under present law.

We would also solicit the assistance of this distinguished committee to help the citizens that we serve, our customers and our mining employees by requesting the Secretary of Interior to reduce the royalty rate.

I again thank you for your kind attention to my statement and welcome any questions.

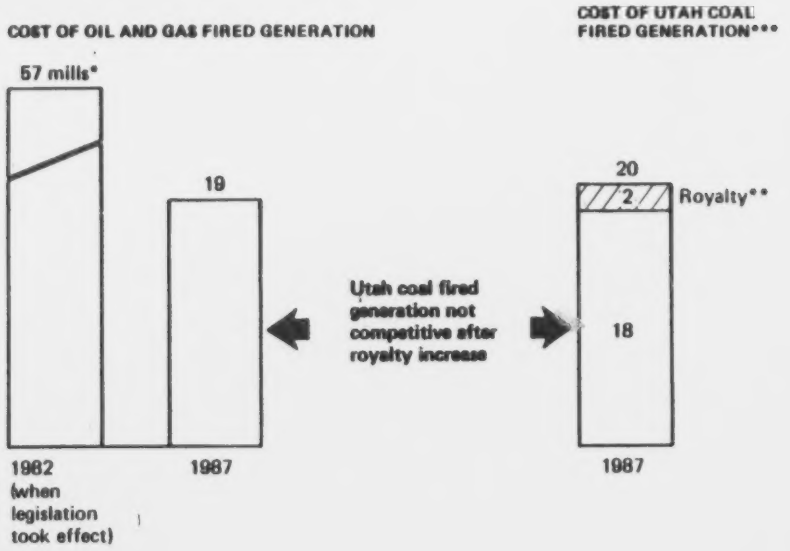
[Attachments to the prepared statement of Mr. Hoskins and a subsequent submittal follow:]

NET LOSS IN COAL EMPLOYMENT

Coal production in Utah will be directly and negatively impacted by the increased royalties. Following the already intense competition from oil and gas, high royalties will eliminate the incentive for California utilities to purchase Utah coal-fired power.

UTAH COAL-FIRED GENERATION
NOT COMPETITIVE AFTER ROYALTIES ADDED

Mills/kwh



* SCE-El Segundo
** Total as proposed by MMS
*** Transmitted to Southern California
Source: FERC Form 1

Exhibit I

As royalties are increased, this competitive pressure will further depress Utah coal sales. The net impact is a sizable loss in coal-related jobs and income in the state. This would be felt most heavily in an area with already high unemployment.

UTAH JOBS AND INCOME LOST AS ROYALTIES RISE

Coal production	Low royalties	14.5 million tons
	High royalties	11.0 million tons
State impact	Coal mining jobs lost*	460 jobs
	Indirect jobs lost	340 jobs
	State personal income decline	$21 million

* Productivity held constant

Source: Resource Data International

Exhibit II

utah power & LIGHT COMPANY

1407 West North Temple
Salt Lake City, Utah 84140
(801) 220-4006

CURTIS L. HOSKINS
Executive Vice President

November 30, 1987

The Honorable John Melcher
Chairman, Subcomittee on Mineral
Resources Development & Production
Senate Committee on Energy & Natural Resources
362 Senate Dirksen Office Building
Washington, D.C. 20510-6150

Dear Senator Melcher:

Pursuant to your decision to leave the hearing record on S. 1120 open until December 1, I have enclosed supplemental information to accompany the testimony I presented to the Mineral Resources Development and Production Subcommittee November 17.

Utah Power & Light Company is very concerned about the disparity in royalty payments between strip-mined and deep-mined coal that would arise if the royalty rate were locked in at 8 percent. As my information explains, those who rely on deep-mined coal would be paying a disproportionately high payment on both tonnage and BTU bases.

Management and labor in UP&L's mines are striving to stay competitive by taking safe, innovative approaches to increasing productivity. We believe that excessive royalty rates on our coal negate our efforts to a degree.

We respectfully suggest that the bill be revised to allow the Secretary of Interior sufficient flexibility to lower the royalty rate on deep-mined coal to the point where citizens who use either form of coal are paying a fair and equal share on royalties.

On behalf of my company, I again express appreciation to you and the subcommittee for giving us the opportunity to testify. If there is further information that you require to assist you in your deliberations, UP&L will be happy to furnish it immediately upon your request.

Sincerely,

C F Hoskins

CLH:kc
Enclosure

cc: Senator Timothy E. Wirth
Senator Wendell H. Ford
Senator Jeff Bingaman
Senator Kent Conrad
Senator Malcolm Wallop
Senator Chic Hecht
Senator Frank H. Markowski
Senator Don Nickles

SUPPLEMENTAL TESTIMONY

Curtis L. Hoskins
Executive Vice President
Utah Power & Light Co.

Senate Committee on Energy and Natural Resources
Subcommittee on Mineral Resources Development & Production
Hearing on S. 1120

December 1, 1987

During my presentation to this subcommittee on November 17, Chairman Melcher got to the heart of the royalty rate matter when he asked me, "What is the value of your coal?" My reply was that the value of UP&L's coal is what our regulatory commissions say it is. In other words, the value is what regulators will allow us to recover in rates.

I would like to submit for the record an elaboration of that particular response. In doing so, I hope to demonstrate why the locking in of an 8 percent minimum royalty rate on the coal we mine puts an inequitable burden on the customers we serve.

To begin, our fuel expense is treated as a pass-through by regulators. Any savings we realize in this area are generally passed directly on to customers and do not flow to the company's bottom line. For this reason, regulatory commissions routinely monitor the costs of our coal and allow only those expenses which are reasonable to be passed on to customers.

Currently proposed valuation methods assume that all costs – including production, administration and return – are provided for in gross proceeds. But consumers value coal, as other fossil fuels, by BTU content. Alternative fuel sources are primarily selected on a delivered cost basis as measured in cents per million BTU.

The overwhelming component of this cost is in the mining. Our Emery County, Utah mines operate under more than 1,000 feet of overburden and several miles horizontally underground. This makes the cost of extraction more than twice as high as the cost of strip mining for several reasons:

- Safety investments add more to the cost per ton than for strip mining.
- More employees are required to operate mining and loadout equipment.
- Smaller capacity conveyors and loaders must be used to haul coal out of the mine.

However, the transportation component of our fuel expense is minimal because our Emery County power plants, which represent about two-thirds of our generating capacity, are virtually mine-mouth operations. Our plant siting was determined by nearness to reliable supplies of high-quality fuel, adequate water supply, and environmental concerns.

All of these factors mean that the value of our coal – the total cost required to get our fuel to our boilers – is almost entirely based on the cost of extracting it from the ground. It

is to this value that the royalty rate is applied, meaning that our customers are being charged a royalty based upon nearly the full delivered cost of coal.

With strip mining, on the other hand, mining and mine-site processing represent a much smaller portion of the total delivered cost of coal. This is because strip-mining is a less expensive process but the transportation expense to distant markets can double or even triple the ultimate cost of this fuel. This is the case with most strip coal operations in Wyoming and Montana.

However, since the royalty rate is applied only to the mine-site value of the coal, citizens who rely upon strip-mined coal are paying a rate based upon only a fraction of the full value of the coal.

The royalty rate differential proposed in S. 1120 of 4.5 percent attempts to compensate for the stated cost and BTU differences but does not go far enough. As Exhibit 1 demonstrates, the 8 percent underground royalty is significantly higher than the 12.5 percent surface rate on a cents per million BTU basis.

UP&L does not advocate charging royalties based on costs not associated with production. We do not argue with logical market

forces which may give a competitive edge to more efficiently mined coal. But we are concerned about the 8 percent rate applied to our deep mined coal because it forces the citizens who rely upon us to bear a royalty burden that is about two and one-half times heavier than those who rely upon strip coal.

I would hope that this issue of fairness by itself would be enough to persuade this subcommittee to revise the minimum royalty rate on deep coal downward to a point where all citizens would pay an equal share for the energy they receive.

There are economic and fiscal considerations in addition to the question of fairness.

First, and most important from a fiscal standpoint, is that the royalty paid on unmined coal is zero. We are at the point now (Exhibit 2) where our coal is losing competitiveness with substitute energy sources such as hydropower and oil or natural gas. As I will explain, this loss of competitiveness has meant a loss of energy savings of about $30 million for our customers during each of the last two years. (Exhibit 3)

This is because UP&L buys electricity from neighboring utilities when their costs are lower than ours, and in turn sells electricity when our costs are lower than theirs.

As international forces have exerted downward pressure on oil and gas, utilities which once bought our coal-fired generation to offset their oil and gas generation have curtailed demand. This has meant a loss of our export margin for our customers, as well as a decline in the need for our coal.

We have attempted to meet this competition by improving the efficiency of our mining operations. (Exhibit 4) We have succeeded in reducing the cost of coal by 20 percent from 1982 to 1987. This has been done by a combination of engineering skill, intensive commitment to productivity by our miners, and, unfortunately, reductions in labor force.

Now we are facing a situation where the royalty rate on our coal is at or near the direct labor expense of mining it. In effect, this high royalty rate negates in part our efforts to remain competitive, while the proposed MMS valuation method escalates the base upon which this rate is applied.

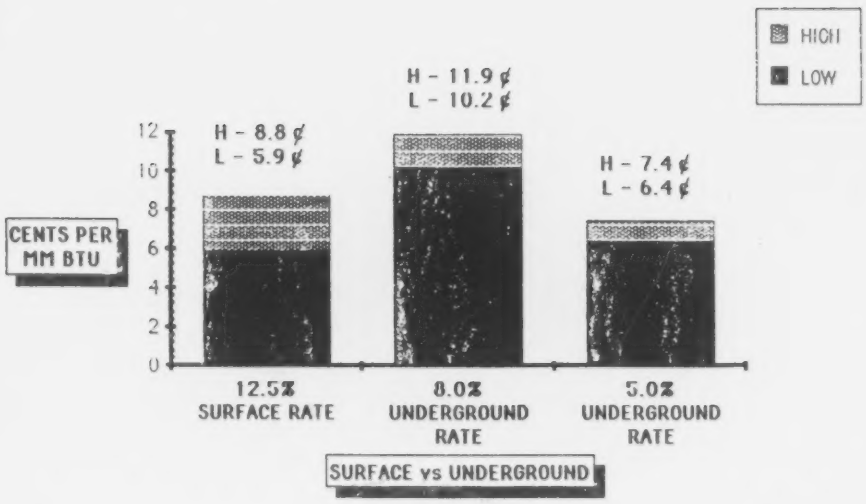
As I explained, the unfairly high royalty rate is entirely a customer expense. This means that our energy-intensive industries and agricultural customers, who themselves must compete, are put at a disadvantage as the federal royalty rate is passed through to them.

For our largest industrial customers, who consume anywhere from 150 million to nearly 1 billion kilowatt hours of energy per year, even a small adjustment in our overall rate structure would be significant.

Exhibit 1

COMPARISON OF FEDERAL ROYALTY RATES

¢ MM BTU BASIS



Contract Coal Costs:

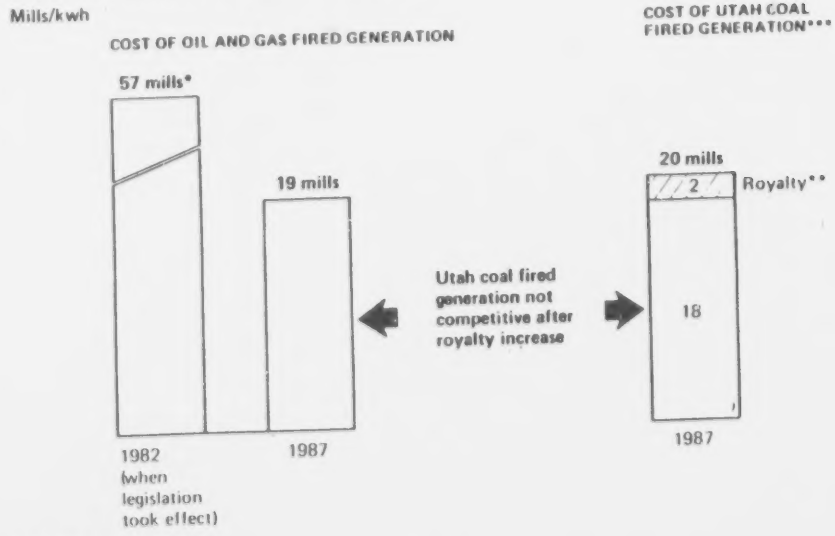
Surface: $8 - $12/Ton (8500 BTU/lb)

Underground: $30 - $35/Ton (11,800 BTU/lb)

Utah Coal Facing
Severe Competition

In 1982 when the coal royalty legislation began to take effect, coal-fired generation was able to displace gas-fired generation in California. However, now that gas prices in California have declined to $1.75 per million BTU, Utah coal-fired generation is only marginally competitive with gas-fired generation in California Thus, surplus sales have been drastically reduced as shown on pages 13 and 15.

UTAH COAL-FIRED GENERATION
NOT COMPETITIVE AFTER ROYALTIES ADDED



* SCE El Segundo
** Total as proposed by MMS
*** Transmitted to Southern California
Source FERC Form 1

Exhibit 2

. . . and has resulted in lost margins of almost $30 million per year, which will have to be recovered through increased rates to its customers, and/or through cost reductions.

LOST SURPLUS SALES MARGINS ARE LARGE

UTAH POWER & LIGHT COMPANY 1982-87 SURPLUS AND CAPACITY RESALE REVENUE AND MARGIN

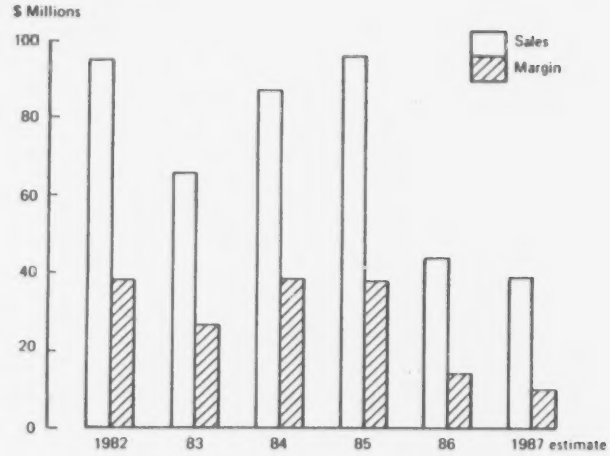


Exhibit 3

For instance, UP&L has already cut manpower and improved efficiency in its coal operations; however, increased royalties offset these improvements.

UP&L HAS MADE LARGE EFFICIENCY IMPROVEMENTS
UTAH POWER AND LIGHT COMPANY COAL PRODUCTION

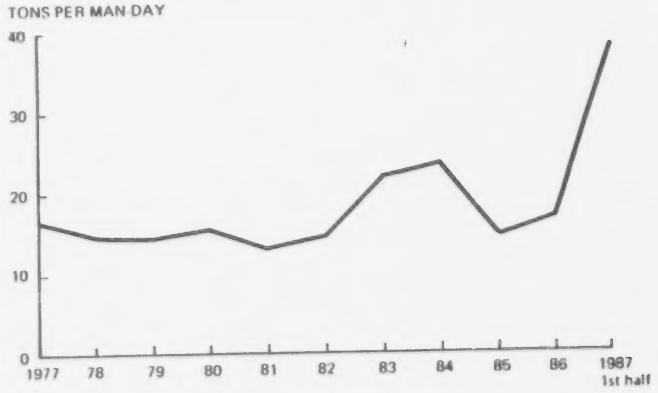


Exhibit 4

Senator MELCHER. First of all, I want to thank all of you for testifying. It is good to have input and critical analysis of the bill that is before us.

This bill is pretty similar to what we had reported out of this committee last year. It did not go anywhere and I do not know why not. Unless it was something to do with amending 2(c).

Mr. Lloyd, did you say you mined some coal for Union Pacific?

Mr. LLOYD. The Medicine Bow coal mine is operated by Dana Coal Corporation, a wholly owned subsidiary on a second-tier basis of Arch Mineral.

And the Medicine Bow Coal Company is a partnership, one half of which is a subsidiary of the Union Pacific Railroad. Hanna Basin Coal Company is the name of their entity.

Senator MELCHER. Well, I think these amendments are necessary.

I keep thinking that when you have got a situation where the Federal leasing of coal is significant beyond what the overall coal market is, I think it is a good time to make the adjustments prior to the time when you need more coal.

I think it is obvious that over the long run we are going to need more coal for this country. So I think the time to make any adjustments in Federal coal leases in the statutes is now. Just as it was last year.

But if this little bill is used as a vehicle to amend 2(c), or attempts are made to use it as a vehicle to amend 2(c), the transportation situation, then I would think that there is no action in this Congress again on amending statutes on Federal coal leases. So we end up with, I guess, nobody winning.

What is the situation now? Do you know, Mr. Lloyd?

Mr. LLOYD. The National Coal Association has an expressed position. We are a member. It is our position here this morning, as Arch Mineral Corporation, we are taking no position with respect to Section 2(c) or any attempts to change that.

Senator MELCHER. Well, the National Coal Association takes a position.

Mr. LLOYD. Yes, sir. I guess what I would like to point out is that in S. 1120, as presently drafted, we see that our plight is southern Wyoming is really not related to any real rate disputes.

And in fact I would point out that of the two mines that we formerly operated out there, the one that is on idle standby and producing no coal at present is one in which Union Pacific has a subsidiary interest as a joint venture partner. And the only mine we are operating is our own.

Senator MELCHER. The point you made in the bill about, or made in your testimony regarding a special bituminous coal mine, that is in Section 7 of the bill. Is it satisfactory or not?

Mr. LLOYD. Yes, Mr. Chairman, it is.

Senator MELCHER. It is. In other words, you need it. Well, it is already in the law. Is it not?

Mr. LLOYD. No, Mr. Chairman, it is not.

Senator MELCHER. So we are going to put it in the bill to take care of a problem.

Mr. LLOYD. Yes, Mr. Chairman. It was recognized in SMCRA. But it was not recognized in——

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Senator MELCHER. That is right. You were clear in your testimony. But you did not think it was recognized in the Federal coal leasing statutes as they now stand.

Mr. Hoskins, how much is that coal worth? You said 8 percent royalty amounts to $2 a ton. What is that coal worth?

Mr. HOSKINS. It is valuable coal. It costs a lot to mine.

Since most of it is sold, in effect, directly to the utility and used as fuels for electricity service to the customers, its worth is determined by regulated rate of return.

Senator MELCHER. So it is worth $25?

Mr. HOSKINS. The costs are passed through to the customer.

Senator MELCHER. Is it worth $25?

Mr. HOSKINS. Most of the coal we are mining now is in that area of cost.

Senator MELCHER. Yes, 8 percent of $25 is $2. So that is what it is worth if you would be paying $2 royalty, based on 8 percent.

Mr. HOSKINS. That is correct.

Senator MELCHER. What is the BTU?

Mr. HOSKINS. It is about 11,000. It is high-quality burn.

Senator MELCHER. As compared to what in the Powder River Basin? Would it be 9,000, is that about right?

Mr. O'CONNOR. It would be 8,200 to 8,800.

Senator MELCHER. Well, how do you price that coal?

Mr. HOSKINS. We price it out of the cost of mining.

Senator MELCHER. And then you put it in a rate base?

Mr. HOSKINS. The investment is in the rate base, that is correct.

Senator MELCHER. Maybe you have got it priced too high.

Mr. HOSKINS. We mine it as cheap as we can. And we are taking every step to reduce costs because of the competitive forces of natural gas and hydropower all around us.

Senator MELCHER. Well, I do not know. I think the coal market has been pretty sluggish. I did not know that your coal was worth that much.

So at $25 a ton in the rate base, the consumers might be paying quite a bit.

Mr. HOSKINS. Well, underground coal, of course, is the most expensive to mine. It does result in our utility being one of the highest-priced electric utilities to its customers in the Northwest area. And we have——

Senator MELCHER. You really do not have much competition in Utah, do you?

Mr. HOSKINS. Yes, the competition is intensifying. It is becoming a new ball game. The low prices of natural gas are of concern to us, presenting opportunities for natural gas competition.

And we do have, because of the general surplus situation all around us, hydro competition from outside, and threats to shift part of our service territory to other utilities.

Senator MELCHER. Mr. O'Connor, you said Peabody mined 25 million tons of Western coal. And that Peabody was the largest single coal producer in the United States.

How much Eastern coal do you produce?

Mr. O'CONNOR. Last year, Peabody produced, we are operating 50 coal mines in the United States. And I believe we produced ap-

proximately 60 million to 65 million tons of coal, 25 million of which came from the West.

Senator MELCHER. So about 40 million is Eastern coal and you are selling it for $25 a ton?

Mr. O'CONNOR. I am not qualified to address what we are selling coal in the Eastern United States for, Mr. Chairman, because my area of responsibility is exclusively in the West.

But there is no doubt but that with the thinner seams and thicker overburdens, that the coal costs are considerably higher in the East than they are with the thick seam operations in the Powder River Basin.

Senator MELCHER. Mr. Hoskins, in spite of all this competition, Utah Power and Light is doing very well. Are they not?

Mr. HOSKINS. We have had some tough years. Earnings this year have been better than it has been. But we have some very serious concerns.

Industrial customers are coming in almost daily asking for rate reductions.

Senator MELCHER. Would 50 cents a ton, $24.50, be a big thing in the rate base?

Mr. HOSKINS. Yes. We would presume that any royalty amount would be allowed in the rate base for recovery by a customer.

But the point is, we want that to be a fair amount, and we need to take every step conceivable to hold down rates to our customer. Because of the new ball game we are in and the competitive threats all around.

Senator MELCHER. We had this bill before us a long time last Congress, and that 8 percent for underground mining was in the bill last year.

I do not know whether we heard from you last year, last Congress or not. But nevertheless, you have made your point, and we will look at it.

Mr. O'Connor, I gather from your testimony that you believe that S. 1120 will have a favorable impact on development of Federal coal. Do you think that is a fair statement?

Mr. O'CONNOR. Yes, sir. It certainly is.

Senator MELCHER. You testified that you believe the 20 years under the conditions that are established in the bill is not adequate.

What do you think about the definition we have in S. 1120 on the substantial investment? Because that is one of the factors.

Mr. O'CONNOR. Well, I am not prepared to address specifically whether or not the percentage is exactly right or is a little bit off. I think the concept is certainly beneficial.

Senator MELCHER. Would it not in almost all cases be that you are going to have a 1 percent, let us see. You have to make a five cents per ton investment in order to enjoy the fruits or enjoy the flexibility within 20 years.

Is it not true that in almost all cases that that five cent per ton investment on the lease, is that not going to be made?

Mr. O'CONNOR. Let me address the issue more specifically. I will address this specifically with regard to Peabody, because very frankly I am not sure exactly what the National Coal Association

and American Mining Congress position is, relative to whether five cents is right or should be less or should be more.

But with regard, in Peabody's instance, we do not have any particular problem with that.

Senator MELCHER. You do not have any particular problem. So you do not have any problem, and I would suspect that is true of all Western coal-mining operations. That is no problem.

So then you have a problem that even though you have got that flexibility, you are going to get that 20 years. You do not think the 20 years is adequate.

Mr. O'CONNOR. Perhaps I misstated, Mr. Chairman. I said that I do not think 10 years is adequate for the development, and that we need somewhere in the area of 15 to 20 years.

Now, where I said that 20 years is not adequate is in the case of advanced royalty payments not being able to be made after the 20th year of the lease.

Senator MELCHER. You mean, in other words, you have got to make it, under this bill you would have to make it during that 10-year extension.

Mr. O'CONNOR. Yes. With regard to the way this bill is written, one could hold a lease by paying advanced royalties up to, or paying the holding fee up until the 20th year. And we support that concept.

Senator MELCHER. Do you support that or not?

Mr. O'CONNOR. Yes, sir, we do.

Senator MELCHER. Well, that would be between the 10th and the 20th year.

Mr. O'CONNOR. Yes, sir.

Senator MELCHER. Do you think it should go beyond 20 years?

Mr. O'CONNOR. I guess that is an issue we would want to take a look at, and address later.

Senator MELCHER. Do you support this five cents per ton investment?

Mr. O'CONNOR. Particularly, we support the concept of what you have embodied here.

Senator MELCHER. I just want to be sure, you are in favor of Section 7, the 40-year mine-out, which would be deleted.

And you support the provision in the bill that would delete the, that would change the logical mining unit requirement for being contiguous.

Mr. O'CONNOR. Yes, sir.

Senator MELCHER. And also delete the three-year mine plan submission, which is all addressed, I believe, in answering the problems that now exist for Western coal mining. So you support all of that. Correct?

Mr. O'CONNOR. Yes. We have some technical suggestions, but certainly we support all of those items.

Senator MELCHER. We would just as soon have your technical suggestions as the staff's technical suggestions. They are perfectly in order. Thank you very much.

I want to call next Mr. Kay McIff. He represents some royalty owners in Utah. He comes from Richfield, Utah, and his comments, whatever he chooses to make, will fit in right here.

Mr. McIff, I learned just recently that royalty owners have an interest in Utah in this bill. So please proceed.

STATEMENT OF KAY L. McIFF, ATTORNEY, RICHFIELD, UT

Mr. McIFF. Thank you very much, Mr. Chairman. I appreciate the opportunity to testify.

I should like to identify my exposure to the subject matter, so the Committee can appraise my comments accordingly.

My exposure to the subject matter has come in the Coastal States litigation, which affirmed the Secretary of Interior's power to bring existing Federal leases into conformity with the 1976 Federal Coal Leasing Amendments Act.

I represented, and still represent, the former owners of the Coastal mine, who retained an overriding royalty interest tied to the Federal rate.

Our interest therefore parallels that of the United States and the Western states, where Federal coal is principally located.

The Coastal litigation raised many of the same issues on which your Committee has focused. Of necessity, I have become a serious student of those issues and of the Federal coal leasing program, particularly of the revamping of that program which occurred in the 1970s.

I intend to quickly make five brief points, which I think may be useful to this Committee.

Number one, the revenue impacts of any proposed change in royalty payments are extremely important.

Any reduction in royalties, whether by changing the rate or the valuation formula, will have serious negative consequences for the Federal and state treasuries, who by any standard, need the money.

The fundamental question, I believe, is this. Should the royalty revenues owed to the state and Federal governments be replaced through imposition of a general tax?

Should the money come, as it does now, from the ratepayers who are the ultimate beneficiaries of the depletion of our irreplaceable natural resources? Or should government services be reduced?

If the coal industry succeeds in persuading governments to lower the royalty rate, then either those revenues will be made up through higher taxes, or educational programs in Utah and other states and Federal programs will be cut back.

I think I am correct, Senator, in noting that you correctly and convincingly pointed to your colleagues in the 1976 debates that Congress had a duty to ensure a fair return for the people of the United States.

Number two, promises of increased production from Federal leases are hollow and without supporting foundation.

The recently completed study conducted by the Department of Energy concluded that even if Federal royalties were reduced to zero, there would be "no significant impacts nationally and only modest shifts in production regionally."

The report goes on, "electricity prices and market shares of coal for electricity generation appear essentially unaffected." That study was released in September.

A study now being formalized by the Utah Energy Office is in accord. In fact, I am not aware of any credible study to the contrary.

Efforts have been made, and are being made, to encourage Utah's governor to support an across-the-board reduction of the underground rates, so that Utah coal would gain competitively against coal from the northern Great Plains.

The premise is false, but would, even if true, only fuel the fires for lower rates elsewhere, ultimately resulting in no additional demands for coal, but significantly decreased revenue to Federal and state treasuries, as well as to Indian tribes and my clients.

Number three, the threat of abandoning or mining around Federal leases is of limited credibility. As pointed out by Assistant Secretary Griles in his testimony yesterday, production from Federal leases has tripled since the mid-1970s.

He accurately stated that all of the readjustments have not been complete, but failed to note that many, if not most, of the mines in Utah are now collecting the higher royalties from their customers and holding the funds in escrow accounts.

Consistent with the DOE study, production has remained essentially unchanged. For example, the Coastal States mine in which we are interested has been charging the readjusted rates to its customers for over five years without any loss of production or market share. To the contrary, it has expanded with new contracts that run into the 21st century.

Reference to the temptation to mine around Federal coal could be better described as an attempt to mine out certain tracts before the readjusted rates apply. No Federal coal need be left because of overly-high royalty rates.

Section 39 of the Mineral Leasing Act allows reduction of the rate to anything above zero in order to prevent wasting of the resource. The necessary flexibility is already in the statutes and the applicable regulations.

Number four, 8 percent should be reaffirmed and strengthened as the standard underground royalty rate. Any across-the-board rate below 8 percent would benefit undeserving mines, operations that are highly profitable and therefore have no reason to avoid paying the full royalties due the people of Utah and the United States.

It is both interesting and revealing that Utah Power and Light is here, while Coastal is not. Utah Power and Light has an adequate remedy under existing regulations.

The Interior Department has stated in a Utah Power and Light case that, "difficult conditions do exist" at a UP&L mine and that "a royalty reduction may be warranted." I emphasize that this proposed relief would be under existing Interior authority.

In contrast, the Coastal mine, which would also be embraced by any general reduction on royalty payments, is extremely profitable. I choose those words carefully. The evidence before the court in the litigation revealed a net angle return on investment of about 30 percent, with the higher royalties being accounted for.

Over $10 million, which rightfully belongs to the State of Utah and the Federal government, sits in Coastal's escrow account.

It is also revealing that Coastal has paid substantial bonuses to obtain new Federal leases at 8 percent and 11.68 percent, while at the same time arguing that readjustment to 8 percent is unreasonable.

There may be companies that can demonstrate entitlement to lower rates. Section 39 is designed to address that problem, and Interior, as stated by Mr. Griles yesterday, has finalized the necessary guidelines for providing that relief.

To afford across-the-board relief to the underground industry, without demonstration of individual need, would be fiscally irresponsible, as well as inequitable.

Number five, the higher royalty rates Congress intended to apply to readjusted leases remained fair, equitable, and relevant.

My final point refocuses on what Congress attempted to achieve in 1976. In the early 1940s, Utah coal sold for some $2 per ton. A 15-cent royalty was equivalent to an ad valorem rate of 7.5 percent. Little price movement occurred during the next 30 years.

However, the 1970s saw dramatic increases so that by the end of that decade the price was almost 10 times what it had been in 1940.

In 1976 Congress intentionally adopted ad valorem rates so that revenues would track with the changing price of coal, and bring in approximately the same percentage of revenue that the earlier cents-per-ton formula did when the Mineral Leasing Act was adopted in 1920.

Mr. Chairman, I respectfully submit that in 1976 Congress properly reacted to a gross inequity, that the rates now being applied have long been anticipated and fairly require the coal industry to pay the people of the United States and the West a reasonable price for the depletion of a valuable natural resource.

There is, in my judgment, no reason to retreat, and to do so would be a serious mistake. I think your bill, Mr. Chairman, will help maintain the integrity of the management of our natural resources. Thank you very much.

Senator MELCHER. In our bill we just say that underground mining coal royalties will be 8 percent. That removes some flexibility.

It could be higher than 8 percent, but it cannot be any lower than 8 percent. So that removes flexibility to go downward.

Mr. MCIFF. It does not remove that flexibility under Section 39. Section 39 still allows the rate to go as low as anything above zero, which I presume would mean a penny a ton or some smaller increment conceivably.

Senator MELCHER. Yes, you are correct. Just so I understand, you represent some royalty owners.

Mr. MCIFF. That is correct, sir.

Senator MELCHER. And those royalty owners are whom?

Mr. MCIFF. The former owners of the Southern Utah Fuel Company mine, located near Salina, Utah.

They hacked that mine out of the side of a mountain back in the late 1930s and early 1940s, sold it to Coastal States in December of 1973, reserving an overriding royalty tied to the Federal rate.

The process was then in motion to increase the Federal rates, which ultimately happened, as you know, in 1976.

Senator MELCHER. What is Coastal paying right now?

Mr. MCIFF. What rate?

Senator MELCHER. Yes.

Mr. MCIFF. It has several different leases, Mr. Chairman. It has two leases that were involved in the litigation, and it is continuing to pay 15 cents per ton on those, though it is collecting the higher royalties from its customers, and is escrowing those monies.

There are two other leases, one of which——

Senator MELCHER. Subject to the termination or the decision in the litigation.

Mr. MCIFF. The litigation was actually concluded, favorable to the government, though it is still left to Interior to determine how to handle the rate between 5 percent and 8 percent. And that remains uncertain at this time.

Senator MELCHER. I see.

Mr. MCIFF. Mr. Chairman, in further answer to your question, there are those two leases. Then there are two other leases that it has competitively bid, and it is paying 8 percent and 11.68 percent on those two leases.

And further, there are some private leases on which it is paying the higher rate, 8 percent or 11.68 percent, depending on what is mined during any particular period of time.

Senator MELCHER. Now, the royalty that your clients receive, then, is tied to the Federal royalty.

Mr. MCIFF. That is correct.

Senator MELCHER. And you are testifying that the State of Utah's share is tied to the Federal royalty.

Mr. MCIFF. Yes, Mr. Chairman. There are two scenarios involving the State of Utah.

One is the state's participation in the Federal royalties. It receives, as does other Western states, 50 percent. The state also has a number of leases involving state school sections.

Senator MELCHER. Oh, I see.

Mr. MCIFF. And the rate on those sections is tied to what the leases refer to as the prevailing Federal rate.

Senator MELCHER. I see.

Mr. MCIFF. So whatever happens in the Federal context impacts those state leases. And there is currently litigation involving those leases, and approximately $13.5 million at stake on state lands.

Senator MELCHER. What about Indian tribes? Are they involved with any of this?

Mr. MCIFF. Indian tribes are involved, not in our particular mine, but they are in New Mexico and other of the Western states.

And most of their rates are likewise tied—I think that is an accurate statement—in at least several instances I am aware of, where the rate on the Indian lands is tied to the Federal rate.

Senator MELCHER. Well, I do not know whether it is or is not, because nobody from the Navajo Nation asked to testify. I would suspect that they have got their own contracts between the tribe and the companies that are mining the coal.

Mr. MCIFF. May I make one additional comment about the Indian lands?

Senator MELCHER. Yes.

Mr. McIFF. Even if their rate is not tied to the Federal rate, it is impacted in this sense.

If they have a rate that is fixed, and the Federal rate is adjusted downward, it makes their coal less marketable, and they find themselves with something that they cannot sell.

Senator MELCHER. I believe that is correct. Your testimony today is that Section 39 royalty reduction provisions and guidelines issued by the Department of the Interior last summer are sufficient to provide relief for the 12.5 percent and the 8 percent royalty rates where it is needed, and where it can be justified.

Have I interpreted your testimony correctly?

Mr. McIFF. You have, Mr. Chairman.

Senator MELCHER. All right. Thank you. You have served the Committee well by coming forward to testify, and we appreciate it.

Now, Mr. Griles, you want to get away from here by 12:00. You have to get away from here by 12:00.

Mr. GRILES. That is correct.

Senator MELCHER. We will call you right now to make sure that you can do so. Steven Griles is Assistant Secretary for Land and Mineral Management, Department of the Interior.

STATEMENT OF J. STEVEN GRILES, ASSISTANT SECRETARY, LAND AND MINERALS MANAGEMENT, DEPARTMENT OF THE INTERIOR

Mr. GRILES. Let me submit for the record my entire statement and summarize quickly, so that we can get to the basic points of your concerns.

First, Mr. Chairman, as the other witnesses have indicated, I want to say that your bill, S. 1120, is a good starting point to begin the process of amending the present law.

We support your efforts and concur that the amendments are needed in order to allow for timely development, a Federal goal in the future.

Mr. Chairman, you made the point, and I would like to concur in that point, that the time to make adjustments is now because we are going to need additional Federal coal in the future to meet our energy needs.

And if we wait until a crisis occurs to make these changes, they will be made in a crisis mode. I think we should move forward now with this type of legislation, to do that.

We are not in a crisis today, but we do have particular concerns. Some of the witnesses have talked about Federal bypass coal. Mr. O'Connor from Peabody mentioned that. His analysis is correct, that coal is being bypassed.

Mr. Chairman, we submitted to the Committee last week legislation that the Administration would support that would amend Section 7. As you can see—if you have had an opportunity to read our draft—S. 1120, your legislation in many aspects is similar to the Administration's legislative proposal.

The Administration's proposal was subject to extensive substantial analysis and debate within the Administration as to how we should move forward with addressing the very issues you have addressed in your bill.

Let me just say that our proposal would implement the philosophy and would provide, among other things, a streamlined readily-comprehensible approach to coal management that also would provide a monetary return to the Federal Government regardless of whether the lease is producing.

I would like to just highlight, Mr. Chairman, our position on the key issues. Then the testimony itself will speak in detail to those.

We believe that the current legislation enacted in 1976 does not allow either the Department or industry sufficient flexibility to accommodate reasonable coal development timeframes. Witnesses have testified specifically to examples of why that is true.

A lease that was issued and was readjusted after August 4, 1976, shall terminate if not producing in commercial quantities 10 years after issuance of readjustment. Mr. Chairman, that is an unrealistic requirement.

It is not and does not reflect the current reality of what it takes to open a coal mine, particularly in the Western United States.

Section 7, as it is currently in the law, has adverse repercussions on the effective management of coal. The amendments we support address that.

Specifically, lease competition would be reduced as prospective bidders discount or refuse to submit bids for leases. Revenues to the Federal Government would be reduced, and less monies would be distributed to the States under the current statute.

Leases may be prevented from developing coal from some leases at the time when leases could have maximum value to the national economy and, more importantly, to future energy needs.

Specifically, Mr. Chairman, the time required to develop a new mine, as I have indicated, takes longer than 10 years.

Specifically, the new standards of the Surface Mining Act, along with other standards, have added at least four and a half years to the development of typical new Western coal mines. Your bill and our proposal allows for a longer period of time.

We believe that there should be a holding fee established. We have studied that issue, Mr. Chairman, in depth. We believe that a holding fee should be recoupable.

A non-recoupable fee that is large enough to provide significant incentive to produce would be so onerous as to render most projects uneconomical after payment for only a few years. Some proposals from the other body of Congress, in fact, in my opinion, do that.

I presume, Mr. Chairman, that we all agree that the goal is timely development of our resources, not inflicting onerous penalties on those who persevered and produce, despite the many obstacles.

The appropriate size of the holding fee, Mr. Chairman, is something I would like to talk about for a moment. Our recommendation is that after 15 years from the date of the lease the holding fee be based on 0.3 percent of the reserves, thus providing sufficient flexibility to the operator to adjust to changing market conditions.

That holding fee, in our opinion, of 0.3 percent of the reserves, would result in a significant payment that would make management decide whether or not that lease can be brought into production.

We believe the 0.7 percent in your legislation after the 15th year is too high. Our recommendation is consistent with the Linowes Commission, Mr. Chairman, that studied coal leasing and made its reports in 1984.

Regarding another consideration, Mr. Chairman, the proposal that we submitted last week to you would contain no limit on the number of years that a lessee could make minimum advance royalty payments in lieu of production.

You asked the question of the spokesman from Peabody and National Coal about whether 20 years was sufficient. Mr. Chairman, I think the question of whether or not it is sufficient will be determined by the market and the availability of the resource.

Twenty years is an artificial timeframe, simply an addition to the 10 years we currently have. We would recommend no limit on the number of years and have the fee at 0.3 percent so that management of that company would decide whether there was an opportunity to produce that coal within the projected market.

Mr. Chairman, a few other minor but important amendments include the deletion of the requirement for an Operation and Reclamation Plan to be submitted within three years. It is in your bill. We concur with that.

Regarding the elimination of the requirement that all lands in a logical mining unit should be contiguous, we agree with your amendment there. You have different language than we do. We think that the proposal you have and your language is good language.

You also delete the requirement for all reserves in an entire logical mining unit be mined out in 40 years. We agree that the 40-year timeframe should be deleted, Mr. Chairman. It does not reflect the actual mining operations and the type of capital investments that are necessary.

The 1976 amendments had two purposes. One was to ensure diligence, and the other was to prevent speculation in this market. We believe that the proposal we submitted last week to the Committee will in fact achieve those purposes within a realistic timeframe.

We also concur in the amendment in your bill that would make the acreage limitations contained in Section 2(d)(7) apply to Federal lands only.

We have one or two other suggestions. Mr. O'Connor, in his testimony, talked about mine lease modifications that result in major lease changes.

We would concur in that recommendation and would be happy to work with the Committee in trying to develop some language.

Mr. Chairman, I would like to speak to S. 1120. It is a well-intentioned bill. However, we believe that several of its provisions may be too complicated to serve as a long-term basis for managing the Federal coal management program.

We believe the suggestions that we submitted as Administration proposal, would be simpler to administer and will achieve the same objectives that you have indicated that you would like to achieve by your legislation. Our proposal has gone through a careful and a thorough review.

We hope that you will give this proposal full consideration as you move forward with a markup to get legislation moving, be-

cause as you indicate, we are not in a crisis mode. Let us hope we can move legislation before that becomes an issue.

There were a couple of comments made by other witnesses that I would like to respond to at this time, Mr. Chairman. Specifically, I would like to correct a statement in my statement that I picked up on page four.

My statement indicates that we support the provision in your legislation for rates of no less than 8 percent in the case of coal covered by underground mining methods and special bituminous coal mines.

In reading that statement this morning I realized that that is not where we are. We believe that the discretionary authority in the current statute is appropriate authority.

As witnesses here today and yesterday have testified, Mr. Chairman, coal is not uniform. It may be of similar color, but even that varies. And the overburden ratios for deep mine to deep mining techniques are all different.

The Utah mines are an example of where we have problems, and the mines in Colorado that Congressman Campbell spoke to, and the number of miners that are out of work.

We believe we have to look very hard at what our royalty rates should be on those mines. And if we are going to lease coal there, we should lease it within an environment, within a market, that understands that 8 percent may be too high. So the discretionary authority of the Secretary, we think, should be maintained.

As to the particular witness who spoke from Utah, the Department is doing a special study, and that special study will be done on the rate of deep-mined coal.

In other words, should it be 5 percent, 6 percent, 7 percent, or 8 percent? Should it be regional in nature or mine-specific? And that is in response to the Coastal Corporation litigation.

It is our expectation that that study will be finished by the first of January of 1988. It is interesting to note, Mr. Chairman, that the Governor of Utah as well as the Governor of Colorado have endorsed lower royalty rates below the 8 percent for those deep mines so they can compete in a very competitive energy market in which a lot of miners are no longer working because of the competition factor.

With that, Mr. Chairman, I would be happy to respond to any of your concerns or questions.

[The prepared statement of Mr. Griles follows:]

NOV 17 1987

STATEMENT OF J. STEVEN GRILES, ASSISTANT SECRETARY, LAND AND MINERALS MANAGEMENT, DEPARTMENT OF THE INTERIOR, BEFORE THE SUBCOMMITTEE ON MINERAL RESOURCES DEVELOPMENT AND PRODUCTION, COMMITTEE ON ENERGY AND NATURAL RESOURCES, UNITED STATES SENATE, CONCERNING S. 1120, A BILL "TO AMEND THE MINERAL LANDS LEASING ACT OF 1920 TO IMPROVE THE ADMINISTRATION OF THE FEDERAL COAL LEASING PROGRAM, AND FOR OTHER PURPOSES."

I appreciate the opportunity to appear before the Subcommittee today to discuss S. 1120, a bill that would amend the Federal Coal Management Program.

I would like to compliment you, Mr. Chairman, for introducing S. 1120 and for convening this hearing. The bill and this hearing are good starting points to begin the process of amending the present law. We support your efforts and concur that amendments are needed in order to allow for the timely development of Federal coal.

Section 101 of S. 1120 would amend the Mineral Lands Leasing Act to provide that any entity holding a coal lease or leases issued by the United States prior to August 4, 1976, shall not be subject to the prohibition in section 2(a)2(A)(i) if the Secretary determines that all recoverable reserves in the lease have been mined out and the lessee holds the lease solely for the purposes of complying with the applicable requirements relating to reclamation set forth in the lease or in State or Federal law. We support this provision. Subparagraph (A)(i) provides that no lease can be issued to an entity if a lease has been held for a 10-year period and the entity is not producing coal from the lease deposits in commercial quantities. We support this provision in concept, but believe a more reasonable timetable is 15 years.

Section 102 of S. 1120 would add a new subsection 4(A) to section 2(a) of the Mineral Lands Leasing Act, which would prohibit the Secretary or any other

officer, employee, contractor or agent of the Department of the Interior or bureau or agency from disclosing, before lease issuance, to anyone who is not an employee, contractor or agent of the Department data relating to presale appraisal value and the identification of specific comparable sales data, if any, used by the Department in estimating coal tract value. The provision against disclosure would not apply to descriptive data used by potential bidders to prepare bids or, after a lease is issued, the fair market value estimate. We support this provision.

Section 103(a) of S. 1120 would amend section 2(d)(1) of the Mineral Lands Leasing Act by adding a provision to allow noncontiguous areas within reasonable proximity of each other and which are determined by the Secretary to be incorporated into a single operation under the effective control of a single operator to be included in a logical mining unit. We support this provision.

Section 103(b) of S. 1120 would eliminate the provision that any mining plan must require that an entire logical mining unit be mined within not more than 40 years. We support this provision.

Section 103(c) of S. 1120 would amend the Mineral Lands Leasing Act to provide that a logical mining unit could not be approved if the total Federal acreage of the unit would exceed 25,000 acres. Presently, both Federal and non-Federal acreages are required to be calculated in the 25,000-acre limit. We support this provision.

Section 104 of the bill would amend section 7 of the Mineral Lands Leasing Act to contain these general provisions--

- Each lease would be subject to the conditions of diligent development and continued operation of the mine or mines except where operations under the lease are interrupted by strikes, the elements, or casualties not attributable to the lessee, or where the Secretary determines that all recoverable reserves in such lease have been mined out and the lessee holds such lease solely for the purposes of complying with the applicable requirements relating to reclamation set forth in the lease or in State or Federal law.

- The Secretary would, by regulation, prescribe annual rentals on leases which shall be for 20 years and so long thereafter as there is continued operation.

- A lease would require payment of a royalty in such amount as the Secretary shall determine of not less than 12.5 percent of the value of coal as defined by regulation, except that the Secretary could determine a lesser amount in the case of coal recovered by underground mining operations or from certain special bituminous coal mines.

- The lease would include such other terms and conditions as the Secretary shall determine. Rentals and royalties and other terms and conditions of the lease would be subject to readjustment at the end of

the 20-year primary term of the lease and at the end of each 10-year period thereafter if the lease is extended. For leases issued prior to August 4, 1976, on the first readjustment after the date of enactment of the bill, the amount of the royalty required to be paid under the lease would be readjusted automatically by operation of law to a rate of not less than 12.5 percent of the value of coal for surface mined coal, and to a rate of not less than 8 percent in the case of coal recovered by underground mining operations or certain special bituminous coal mines. We support this provision.

New section 7(b)(1) would require that a lease be terminated if it is not producing coal in commercial quantities at the end of 10 years unless the lessee has either made a substantial investment in the lease or chooses to extend the lease beyond the 10th lease year through the annual payment of diligent development advance royalties based on the production royalty which would otherwise be paid and assessed on assumed annual production of 0.3 percent of total recoverable reserves. We support the concept in this provision but recommend one change. The 10-year timeframe should be 15 years. The requirements to satisfy many new regulations, especially for protection of the environment have added at least 4 1/2 years to the development time for a typical new western surface coal mine.

New section 7(b)(2) would provide that a lease which is not producing coal in commercial quantities at the end of 15 years would be terminated unless the lessee has made a substantial investment in the lease and chooses to extend

the lease beyond the 15th year, but not beyond the 20th year, through the annual payment of diligent development advance royalties based on the production royalty which would otherwise be paid and assessed on assumed annual production of 0.7 percent of total recoverable reserves. We support the concept of this provision but believe two changes must be made if the concept is to have any real impact. First, the provision that only allows a lessee to pay advance royalties for a period of only 5 years does not make good managerial sense. We see no reason to establish a limit. Further, assumed annual production of 0.7 percent can seriously impair the viability of otherwise economic projects. We believe a fee based on 0.3 percent assumed annual production provides sufficient flexibility for the operator to adjust to existing market conditions.

New section 7(b)(3) would provide that the amount of any production royalty paid for any year would be reduced by the amount of any diligent development advance royalty paid under the lease to the extent that the diligent development advance royalties have not been used to reduce production royalties for a prior year. The reduction could not be below the amount payable on 1 percent of the recoverable coal reserves under the lease or within the logical mining unit. No diligent development advance royalty paid during the initial 20-year term of a lease could be used to reduce a production royalty after the 20th year. We support the concept of this provision.

New section 7(c) would authorize the Secretary of the Interior, if he determines it to be in the public interest, to suspend the condition of continued operation upon payment of continued operation advance royalties. The continued operation advance royalties could be no less than the production royalty which would otherwise be paid and would have to be computed on a fixed reserve to production ratio, determined by the Secretary. Continued operation advance royalties could be accepted in lieu of the condition of continued operation only for 10 years of any lease. The amount of any production royalty paid for any year could be reduced, but not below zero, by the amount of any continued operation advance royalties paid under a lease to the extent that such continued operation advance royalties have not been used to reduce production royalties for a prior year. No continued operation advance royalty paid during the initial 20-year term of a lease could be used to reduce a production royalty after the 20th year of a lease. Finally, the Secretary would be authorized, upon 6 months' notification to the lessee, to cease to accept continued operation advance royalties in lieu of the requirement of continued operation. We support the concept of this provision; however, we believe it should be modified in the following manner: (1) 15 year lease term, and (2) advance royalty can be paid after 15 years but recoupment would be limited to 10 years.

New section 7(d) would require the lessee to submit an operation and reclamation plan for the Secretary's approval prior to taking any action on a leasehold which might cause a significant disturbance of the environment. The Secretary would be required to approve or disapprove the plan or require that

it be modified. If the land involved is under the surface jurisdiction of another Federal agency, that other agency must consent to the terms of such approval. We support this provision.

New section 7(e) defines the terms "commercial quantities", "diligent development", "continued operation", and "substantial investment". We do not believe these terms should be defined by statute.

As you can see, S. 1120 is similar in many respects to the Administration's legislative proposal to improve the Federal Coal Management Program which was transmitted to the Congress on November 13, 1987. The Administration's proposal was the subject of intensive substantive analysis and debate which emphasized the need for a simplified approach to the Federal Coal Management Program. Our proposal would implement that philosophy and would provide, among other things, a streamlined, readily comprehensible approach to coal management that also would provide a monetary return to the Federal government regardless of whether a lease is producing.

The Bureau of Land Management (BLM) has responded to the mandate of the Mineral Lands Leasing Act, as amended and supplemented, and the Federal Coal Leasing Amendments Act of 1976, as amended, by establishing a coal management program designed to promote the use of coal within current technical, regulatory and economic constraints. However, as the sponsor of S. 1120 has recognized, some of the provisions of sections 2(d), 3, and 7 of the Mineral

Lands Leasing Act, as amended in 1976 by sections 5, 6, and 13 of the Federal Coal Leasing Amendments Act, do not allow either the Department or industry sufficient flexibility to accommodate realistic coal development timeframes.

Section 6 of the Federal Coal Leasing Amendments Act modified section 7 of the Mineral Lands Leasing Act to provide that a lease which is issued or readjusted after August 4, 1976, shall terminate if it is not producing in commercial quantities 10 years after its issuance or readjustment. I shall refer to this section as section 7 or the diligence provision. As the 10-year periods run down, this provision of the 1976 statute has generated considerable interest in those energy firms holding Federal coal leases, as well as in the environmental community.

To assess the impacts of section 7, BLM's Division of Minerals Policy Analysis and Program Coordination prepared an analysis and reviewed and evaluated certain options for amending those provisions. In the study entitled "Analysis of Options for Amending the Mineral Leasing Act Sections 2(a)2(A) and 7", the analysis of alternatives focuses on an examination of the propriety of using a minimum royalty payment, sometimes referred to as a holding fee, as an incentive to encourage diligent development and discourage unproductive speculative holding of undeveloped leases. This analysis has been reviewed and approved by the Administration.

The study strongly suggests that enforcement of the present provisions of section 7 has adverse repercussions on the efficient management of the Federal minerals program.

Specifically:

- o Lease competition will be reduced as prospective bidders discount or refuse to submit bids for leases because of the possibility that they will not be able to sell and develop coal within the permitted time.

- o Revenues to the Federal Government would be reduced and less money would be distributed to the States.

- o Lessees may be prevented from developing coal from some leases at the time when the leases could have maximum value to the national economy and energy need.

The Department has studied these provisions and believes that several particular aspects of the existing law and several proposed alternatives require modification.

One issue examined in depth is the time required to develop a new mine. In 1976, 10 years may have been a reasonable diligence period, however, changes have occurred that make the 10 years an unreasonable period for development. New requirements enacted since 1976, especially for protection of the environment, have added at least four and one half years to the development time for a typical new western surface coal mine. This includes both time for additional work by the lessee and time for application processing and permit

approval. This is the primary justification for extending the diligence period from 10 to 15 years.

The second issue studied by the Department in depth is the recoupability of the proposed holding fee. The conclusion from the analysis is simple: a nonrecoupable fee that is large enough to provide significant incentive to produce would be so onerous as to render most projects uneconomical after payments for just a few years. This distortion of market forces is little more desirable than the current "produce or relinquish" provision of section 7. The recoupable fee provides much more flexibility for the lessee who intends to produce. The higher fee plus the value of the credit against future production royalty are a significant incentive for diligent development. The higher fee is a far better anti-speculation provision than the nonrecoupable fee. I presume we all agree that the goal is timely development of our resources, not inflicting onerous penalties on those who persevered and produce despite many obstacles.

The third issue studied was the appropriate size of the holding fee. The conclusion reached was that the royalty that would be due on annual production of 0.3 percent of recoverable reserves is appropriate for a 15-year diligence period. The important factor is the size of the fee relative to the future economics of the project. A fee higher than 0.3 percent can seriously impair the viability of otherwise economic projects. A fee based on 0.3 percent of reserves provides sufficient flexibility to the operator to adjust to changing market conditions.

As a result of the BLM analyses and consideration of the alternative approaches to amending section 7, we have recommended that Congress amend section 7 to replace the diligence provisions with a system of optional payments in lieu of lessee disqualification and lease termination. This is similar to the existing provision for payment in lieu of continued operation. This approach is consistent with a recommendation of the Linowes Commission as well as previous statements made by this Administration. Some of the provisions are similar to S. 1120.

With regard to section 7, the Administration's proposed bill would retain the existing format. Section 7(a)(1) would contain the basic lease term, royalty rate and readjustment authority as in the existing section 7(a). The production period would be moved to section 7(b).

Section 7(a)(2) would set out the process for readjusting leases issued prior to August 4, 1976. This section is included to remove any doubt that these leases are to be readjusted to make their terms and conditions consistent with the draft bill. We would like to avoid any further litigation such as has resulted from the readjustments of pre-1976 leases to be consistent with the 1976 Federal Coal Leasing Amendments Act. The section would specify that these leases are subject to readjustment as provided in the lease itself and at 10-year intervals thereafter. Finally, the section would mandate the automatic readjustment of royalty rates at future readjustment dates.

Section 7(b)(1) would set out the advance royalty that would be required in lieu of the conditions of diligent development and continued operation in existing law. This advance royalty would always be paid after the fifteenth year, regardless of production, except for mined-out leases which are being reclaimed.

Section 7(b)(2) would define the recoupability of advance royalties paid against royalties on production.

The Administration's proposed bill would contain no limit on the number of years that a lessee could make minimum advance royalty payments in lieu of production, but does limit recoupment from production royalty to the 10-year period following any payment of advance royalty. This would prevent the sort of artificial time constraint and subsequent problems that the current provisions of section 7 have caused. The BLM analysis shows that with royalties based on 0.3 percent of recoverable reserves it is highly unlikely that a lessee would make payments for as long as 10 years because the lessee would no longer be in an acceptable profit position.

An important advantage of implementing a value-based fee (related to the current selling price of coal) is that it should reduce the need for the Secretary to make frequent adjustments to the level of advance royalty as a result of changes in market conditions, since variations in market price will be automatically reflected. Indeed, a change in the fee level would be warranted only if major structural changes occurred in coal markets. Thus, it

is not currently foreseen that the Secretary would need to adjust the fee basis in future years. In the unlikely circumstance that it became necessary to adjust the fee basis, the Secretary would prepare an analysis of the determinations regarding specific terms and levels of fees.

The proposed bill would remove from section 7(c) the requirement for submitting an operations and reclamation plan within 3 years. S. 1120 also removes the 3-year timeframe. We see no reason why a lessee should submit any plan prior to the time it is prepared to mine coal. Requiring submission in 3 years does nothing for diligent development, it is wasteful and redundant. The name is changed to reflect that the plan must demonstrate compliance with the terms of the Mineral Lands Leasing Act. Compliance with other laws such as the Surface Mining Control and Reclamation Act of 1977 is left to those statutory authorities.

Finally, the proposed bill would add a new section 7(d) which would exclude leases issued since August 4, 1976, from the lessee qualification provision of section 2(a)(2)(A). The purpose of this new provision is to avoid the inconsistent result of prohibiting a lessee who is in compliance with the 15-year production period of section 7(b)(1) from obtaining new mineral leases by virtue of the 10-year production obligation in section 2(a)(2)(A). Although the language in section 2(a)(2)(A) "except as provided in section 7(b)" clearly exempts lessees paying advance royalty under section 7(b)(1), the new section 7(d) clarifies this as well.

Section 102(a) of the draft bill would amend section 2(d)(1) of the Mineral Lands Leasing Act by eliminating the requirement that all lands in a logical mining unit shall be contiguous. The contiguity requirement ignores the geological, geographical and engineering realities of coal deposits and is inconsistent with the purpose of logical mining unit planning - that the lands will be mined as a single unit by a single operator. S. 1120 contains the same authority.

Section 102(b) would amend section 2(d)(2) of the Mineral Lands Leasing Act to delete the requirement that all reserves in the entire logical mining unit shall be mined within 40 years. The incentive to form a logical mining unit is seriously compromised by the present requirement. A lessee contemplating forming a logical mining unit faces the problem that a 40-year mine out may limit the size of the unit or require an unreasonable production rate which would be inconsistent with the most efficient mining practice. The current provision not only negatively affects State revenues, but it creates an artificiality in the definition of a logical mining unit, inconsistent with the notion that a logical mining unit should be an administrative determination, for diligence purposes, of a reasonable mining plan. Furthermore, the 40-year requirement does not on its face take into account the years under current law in which advance royalties may be paid in lieu of continued operation of the leases in a logical mining unit, that is, a lessee who pays advance royalties for 10 years after initiating production is faced with a maximum of a 30-year mine-out requirement.

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The terms "mining plan" and "operation and reclamation plan" appear in sections 2(d)(2) and (7) of the Mineral Lands Leasing Act. Our draft bill would delete those terms and substitute in their place wherever they appear the term "mining operations plan". This will allow for the use of a single term consistently throughout the law. It will also make it clear that the plan is a requirement of the Mineral Lands Leasing Act and not of the Surface Mining Control and Reclamation Act of 1977 (30 USC 1201 et seq.).

Section 102(c) of our draft bill would amend section 2 of the Mineral Lands Leasing Act to make the acreage limitation contained in section 2(d)(7) apply to Federal lands only. The current law provides that no logical mining unit can be approved by the Secretary of the Interior if the total acreage (both Federal and non-Federal) of the unit would exceed 25,000 acres. Here again, when a lessee is contemplating the formation of a logical mining unit, he may have no alternative but to limit the size of the unit because of the acreage limitation. We believe applying the 25,000-acre limitation to Federal lands only would have a positive impact on the formation of logical mining units.

Section 3 of the Mineral Lands Leasing Act allows a lessee to secure modifications of his original coal lease by including additional coal lands up to 160 acres. This should not be confused with section 3 of the Federal Coal Leasing Amendments Act which pertains to lessee qualifications. Section 201 of our proposed bill would amend section 3 to allow a lease modification or to increase the acreage limitation from 160 acres to 320 acres and to make the terms and conditions of the modified lease the same as the terms and conditions of the original lease.

The proposed amendment is necessary to eliminate the bypass of unleased Federal coal adjacent to ongoing mining operations. The Secretary has no authority to order the mining of unleased bypass coal. Many lessees are not applying for modifications because that would change the terms and conditions of their leases. In some instances the tract size exceeds 160 acres. Section 201 of the proposed bill would resolve the problem of bypassing unleased Federal coal adjacent to ongoing mining operations.

Section 301 of the Administration's proposed bill would require the Secretary of the Interior to approve changes in terms and conditions of any lease issued or readjusted after August 4, 1976, to make them consistent with the proposed bill. The 15-year period to be producing in commercial quantities would commence on the date the lease was issued, readjusted or otherwise made subject to the Federal Coal Leasing Amendments Act of 1976. In addition, the Secretary would be required to approve changes in the terms and conditions of logical mining units existing on the date of enactment of the proposed bill to make them consistent with the proposed bill.

As stated earlier, S. 1120 and the Administration's proposed bill are similar in many respects. Among the similarities both would -

- o eliminate the requirement that all lands in a logical mining unit shall be contiguous.

- o delete the requirement that all reserves in the entire logical mining unit shall be mined within 40 years.

- o change existing law which provides that no logical mining unit can be approved if the total acreage (both Federal and non-Federal) of the unit would exceed 25,000 acres so that the 25,000-acre limitation would apply to Federal lands only.

S.1120 is a well intentioned bill. However, we believe that several of its provisions may be too complicated to serve as a long term basis for managing the Federal Coal Management Program. We believe that the use of diligent development advance royalty, continued operation advance royalty, production royalty, with both 10 and 15-year periods, both 0.3 and 0.7 percent of recoverable reserves, substantial investment, and a one percent minimum reserves factor for production royalty would create complex administrative and legal burdens for the Federal government as well as lessees.

As I said, our proposed bill has undergone careful and thorough review. In developing this proposal we have been acutely aware of the need for a simplified approach to Federal coal management. Our proposed bill implements that philosophy and provides, among other things, a streamlined, single approach to the Federal Coal Management Program that also provides a monetary return to the Federal and State governments regardless of whether a lease is producing. For these reasons, the Administration's proposed bill is the preferred option for streamlining and improving the Federal Coal Management Program.

I would again like to thank you, Mr. Chairman, for your efforts in conducting this hearing. The existing law relating to Federal coal does not reflect current realities, and it is time to make the necessary changes so that coal is produced.

We are committed to assisting this Subcommittee in any way we can to improve the Federal Coal Management Program.

This concludes my statement. I will be pleased to respond to questions.

Senator MELCHER. Is the BLM undertaking a study relating to the reduction of royalty rates for underground coal from 8 percent to 5 percent?

Mr. GRILES. That is correct. It is my expectation the study will be completed around the first of 1988.

The purpose of the study is to analyze the Coastal Corporation litigation as well as the discretionary authority that the Congress has vested in the Secretary for royalty rates for deep mines.

As I indicated, the Governor of Utah and the Governor of Colorado have endorsed lower rates for coal from deep mines in Colorado because of the tremendous loss of employment in the mines that cannot produce coal within the environment in which it exists there today.

So our purpose is to look at those to see what our purpose is, and how we can best maintain some stability within that region.

Senator MELCHER. Well, if you determined that the rate should be lower, the royalty rate should be lower because of economic conditions that exist now, would you have the flexibility to increase the royalty rates when the economic condition has picked up?

Mr. GRILES. Yes, sir. Under Section 39 of the Mineral Leasing Act, we have the authority to reduce coal royalty rates, both for surface and deep mines, and we have done that.

We could, in fact, make it for a certain limited time period and reflect upon the market value of the coal at that point to see whether or not it should be increased at a later time.

Senator MELCHER. Is that study that the BLM conducting supposed to also demonstrate what impacts there would be on competition on a regional basis, would result if there were a lowering of the royalty rate?

Mr. GRILES. The study will attempt to look at that issue, Mr. Chairman.

It is a difficult issue to look at because, as the spokesmen from the Utah Power and Light indicated, some of these mines are captive.

The question is a fair rate of return versus how much the utility should pass through to the consumer in a captive situation. That is really the issue we are looking at.

Senator MELCHER. And you expect that study to be completed in early 1988?

Mr. GRILES. Yes, sir. Let me explain one other factor, Mr. Chairman.

The witness before me spoke to the Coastal Corporation litigation. The Department is being directed by the court to determine what rate we should establish for deep mines. It is within that context that we are doing the study.

Senator MELCHER. In other words, your study would be completed in time to satisfy the court.

Mr. GRILES. Yes, sir.

Senator MELCHER. It might be helpful to us also.

Mr. GRILES. Yes, sir, I think it will be.

Senator MELCHER. During the past summer, BLM published some new guidelines on royalty rate reductions. How many applications for royalty relief are currently pending before the Department?

Mr. GRILES. Mr. Chairman, at the time that we published those guidelines, it was my understanding—and I would like to submit for the record the exact number 27 were pending before the Department.

When we published those guidelines, one of the things we directed those who had applied for royalty rate reductions to do was to resubmit them, based on the standards, the guidelines of those July publications, so that we could analyze them based on the standards that we had adopted.

Mr. Chairman, my colleague indicates there were 20 pending at the time.

Senator MELCHER. Twenty pending?

Mr. GRILES. Yes, sir.

Senator MELCHER. And you have asked for them to be resubmitted.

What would those guidelines allow? Ten percent to be reduced? Two percent to 10 percent?

Mr. GRILES. Is your question related to the rate of return that would be allowed under the guidelines?

Senator MELCHER. Yes. Does it go as low as 2 percent?

Mr. GRILES. Oh, I see what your point is.

Senator MELCHER. Yes, the royalty rate.

Mr. GRILES. The royalty rate, I am sorry. Yes, what we indicate would be that the royalty rate for deep mined coal could only be effectively reduced to 2 percent. We would limit it within that guideline to 2 percent.

Senator MELCHER. Well, you can charge up to 8 percent.

Mr. GRILES. That is correct.

Senator MELCHER. Then you go down to 2 percent.

Mr. GRILES. That is correct.

Senator MELCHER. That is pretty low, is it not?

Mr. GRILES. That is correct. It would be pretty low, and it would be for the operations that show a negative profit statement, could be at the end of the mine life in which we wanted to recover that coal.

Because once the deep mining stops and they pull the pillars, no one would ever go back and recover that coal again. So the resource would be lost forever.

Senator MELCHER. What about strip mining?

Mr. GRILES. We have a limitation of 8 percent, from 12.5 percent to 8 percent, based on current financial condition. If they want a lower rate than 8 percent, they would have to do a detailed financial statement, which would have to be submitted by an independent audit firm to show that, in fact, they are in a non-profit position.

Senator MELCHER. Boy, does that not lead to all sorts of reasons why we are not making a profit? Under your guidelines, can they also not go down to 2 percent?

Mr. GRILES. There is no question that any royalty reduction, in terms of profitability, is going to be subject to great scrutiny by the BLM before it is granted.

Senator MELCHER. Could it go down as low as 2 percent on surface mining?

Mr. GRILES. That is right.

Senator MELCHER. How many leases do you anticipate will terminate under Section 7 of the Mineral Leasing Act, if it is not amended over the next five years?

Mr. GRILES. The latest figure I have from staff is that expect between approximately 20 leases that would terminate between now and 1990.

Senator MELCHER. Could you give those to us on a state-by-state basis, the lessee and the serial number and the acreage involved and estimated recoverable coal?

Mr. GRILES. Yes, Mr. Chairman.

[The information follows:]

83-429 - 88 - 4

58 POTENTIAL FEDERAL COAL LEASE TERMINATIONS
DUE TO LACK OF PRODUCTION BY DECEMBER 31, 1992

STATE	LESSEE	LEASE NUMBER	DATE ISSUED	ACRES	ANTICIPATED TERMINATION DATE
COLORADO	Eldridge, Helen Christine	D043937	04/05/32	120.25	03/01/90
	General Electric Holdings, Inc.	C25948	06/01/80	85.26	06/01/90
	Grand Mesa Properties Co.	C051669	09/01/61	1,092.33	10/01/91
	Martinez, Albert	P058043	09/11/41	40.00	09/11/91
	Mid-Continent Resources, Inc.	C0125456	04/01/61	80.00	06/01/91
		C030345	04/01/61	117.05	06/01/91
	North Central Energy Co.	C067	07/01/52	961.92	02/01/90
	Ruby Construction Co.	D051698	09/11/41	146.26	09/11/91
	Sunland Mining Corp.	D046544	12/03/37	160.00	09/04/89
	Utah International, Inc.	C0123476	12/01/66	2,255.22	05/01/92
	TOTAL ACRES = 5,058.29	TOTAL RESERVES = 136,505,500 TONS			
NEW MEXICO	Ametex Corp.	SF048323	07/19/29	120.00	03/01/91
	Bank of America National Trust	NM28093	04/01/80	3,855.60	04/01/90
	Davis, Robert L.	SF074673	01/10/41	40.00	12/01/91
	Padilla, Gilberto	SF077779	05/01/49	40.00	01/01/91
	San Juan Coal Co.	SF071448	06/11/40	40.00	02/01/92
	Sunbelt Mining Co., Inc.	NM0186612	08/01/61	1,383.02	12/01/91
	TOTAL ACRES = 5,478.62	TOTAL RESERVES = 89,907,000 TONS			

58 POTENTIAL FEDERAL COAL LEASE TERMINATIONS DUE TO LACK OF PRODUCTION BY DECEMBER 31, 1992

STATE	LESSEE	LEASE NUMBER	DATE ISSUED	ACRES	ANTICIPATED TERMINATION DATE
OKLAHOMA	Bay Petroleum, Inc.	BLMC022999	06/01/62	1,384.78	06/01/92
	Cari International Mining Corp.	NM141015	07/01/62	360.00	07/01/92
	Evans Coal Co.	BLMC022012	08/01/53	793.50	07/01/90
		BLMC028369	07/01/52	1,000.00	12/01/90
		BLMC028799	05/01/56	640.00	07/01/90
		BLMC029794	04/01/56	2,438.96	07/01/90
		BLMC030584	09/01/56	2,540.52	07/01/90
		BLMC031611	10/01/56	2,530.20	07/01/90
		BLMC032224	03/01/54	400.00	07/01/90
	Farrell Cooper Mining Co.	BLMC031985	12/01/57	1,844.30	07/01/90
		BLMC032614	02/01/58	1,000.00	07/01/90
		NM033722	02/01/62	2,552.00	05/01/92
		NM033723	03/01/62	2,520.00	05/01/92
	Howe Coal Co.	NM025632	09/01/61	2,266.34	12/01/91
		NM033866	03/01/62	2,047.71	05/01/92
		NM034521	03/01/62	2,543.51	05/01/92
	K&R Coal Co.	BLMC031135	05/01/56	1,180.00	07/01/90
	Lone Star Steel Co.	BLMC018125	09/01/50	2,560.33	07/01/90
		BLMC018820	05/01/62	965.16	07/01/91
		BLMC021581	08/01/51	1,500.00	06/01/90
		NM050405	12/01/59	1,116.17	04/01/91
		NM050406	12/01/59	2,400.31	04/01/91
		NM059992	06/01/59	1,680.00	04/01/91
		NM059996	04/01/60	718.88	01/01/92
	Midwest Mining Co.	NM161332	12/01/61	2,556.60	12/01/91
	TOTAL ACRES = 41,539.27	TOTAL RESERVES = 124,481,000 TONS			

58 POTENTIAL FEDERAL COAL LEASE TERMINATIONS DUE TO LACK OF PRODUCTION BY DECEMBER 31, 1992

STATE	LESSEE	LEASE NUMBER	DATE ISSUED	ACRES	ANTICIPATED TERMINATION DATE
OREGON	CPS Mining Co., Inc.	ORE05272	06/01/57	537.50	12/01/89
	Eden Ridge Coal Co.	ORE012472	06/01/62	2,354.23	11/01/92
	TOTAL ACRES = 2,891.73	TOTAL RESERVES = 14,942,000 TONS			
UTAH	Blackhawk Coal Co.	SL046652	08/03/21	802.36	05/01/92
		U25484	06/17/21	633.84	11/01/91
	Brigham Young University	U024814	01/01/58	36.90	01/01/91
		U08606	10/01/53	40.00	01/01/91
	COP Coal Development	U024316	05/01/58	400.00	08/01/90
	Fulton, Caesar	SL071561	03/01/51	80.00	06/01/89
	King Cannel Coal Co.	SL050619	06/01/38	240.00	09/01/89
	Kingston, Charles W.	U022918	04/01/58	120.00	08/01/90
	Mountain States Resources	U5135	05/01/77	8,823.88	05/01/87*
	Rasmussen, Aaron H.	SL049042	08/14/37	40.00	07/01/89
	Utah Power & Light Co.	SL048223	04/05/30	120.00	06/01/89
	Wasatch Coal Co.	SL063011	11/28/41	280.00	06/01/92
	TOTAL ACRES = 11,616.98	TOTAL RESERVES = 71,032,970 TONS			

*Federal Coal Lease Terminated by Law on May 1, 1987.

58 POTENTIAL FEDERAL COAL LEASE TERMINATIONS DUE TO LACK OF PRODUCTION BY DECEMBER 31, 1992

STATE	LESSEE	LEASE NUMBER	DATE ISSUED	ACRES	ANTICIPATED TERMINATION DATE
WYOMING	Ark Land Co.	W054728	11/01/61	640.00	11/01/91
	Medicine Bow Coal Co.	W58095	10/01/80	1,280.00	10/01/90
	Wyodak Resource Development Corp.	W85379	04/01/61	240.00	06/01/92
	TOTAL ACRES = 2,160.00	TOTAL RESERVES = 37,588,970 TONS			

Senator MELCHER. And the date of termination for each lease. All right, I note that the Department's proposed bill would contain no limit on the number of years that a lessee could make minimum advanced royalty payments in lieu of production.

Why should lessees be entitled to block up Federal lands for an unlimited period through the payment of a fee?

Mr. GRILES. We believe that the fee that we would suggest and have proposed would compel the management of that company to make a decision as to whether or not it is going to go into production.

Senator MELCHER. That fee is .3 percent.

Mr. GRILES. Of the reserved factor of the mine, times the ongoing value of the coal. So it is not .3 percent of the value per se.

It will result in a significant payment on an annual basis, Mr. Chairman. And we think that a company would not be out there simply paying money to the Federal treasury on a speculative basis. We think this .3 percent, in fact, will prevent speculation.

It will allow a company which says, I see within three to five to 10 to 15 years a change in the market, as you indicated, a need for additional Federal energy. We have this coal leased. We have the company which has done a mine plan. We have them in a position to start development.

But the contract is not there. The mine, the power plant, as you well know, the demand for Federal power—power from electrical power in the West—is a lot less today than it was, say, 10 years ago.

And we could be in a position of having that lease available, having that mine facility available to go into production. What we are really interested in is making sure that that mine does do that, because that lease probably is going to meet the environmental standards.

If we forced other leases onto the market that may not have the same environmental standards and situations, that may have a different impact. So we think that we should force the company to make a decision through a holding fee.

Once they do start production, we think they ought to be able to recoup that, because they have, in fact, met the diligence standards and anti-speculation has not occurred because they obviously went to production.

Senator MELCHER. I guess you are saying the investment, the advanced payment would be greater under your proposal than it is under S. 1120.

Mr. GRILES. No, sir. It would not be as great as under your proposal. We think that your fee of 0.3 percent the first five years and I believe 0.7 thereafter for the next five years, would in fact result in a much too onerous payment.

People would, in fact, terminate the lease before they would have an opportunity to work within this market of the future. We are not disagreeing with the concept, Mr. Chairman, that you have. We are simply saying that we think the payment that you are proposing is too high.

Senator MELCHER. Do not complicate our lives if you can help it. We understood you supported this last year, on this point.

Mr. GRILES. We support the concept, Mr. Chairman, of your bill. What we are recommending is a technical change that will we think will result in better legislation.

Senator MELCHER. Well, maybe you are going to be around here in 40 years. I doubt whether I am.

The only one I can see on the Committee, if they were all seated here in person, that might be around here 40 years from now is Senator Nickles. Or Senator Conrad. We have got one on each side. But none of the rest of us expect to be here in 40 years.

Mr. GRILES. I hope in 40 years they will look back on your efforts here and say that we were correct and we have a fee that will, in fact, reflect that these leases should be held and the payment should be made. It will result in a good, efficient coal management program. And I think that is what we are attempting to do.

Senator MELCHER. Well, please put a posy by my tombstone, will you? [Laughter.]

Mr. GRILES. We will not make it of coal though.

Senator MELCHER. Do you have any position on 2(c) regarding this bill?

Mr. GRILES. The Administration since 1951 and all Administrations to date have supported the repeal of 2(c).

Senator MELCHER. Well, I mean on this bill.

Mr. GRILES. It is not on this bill, Mr. Chairman.

Senator MELCHER. Well, what is your position on this bill? Do you want us to pass this bill or not?

Mr. GRILES. We would like to see a bill that would reflect the kinds of considerations we have offered today so that we could support the passage of the bill.

Senator MELCHER. All right. That is good enough. Okay, thank you very much.

Mr. GRILES. Thank you, Mr. Chairman. I apologize for having to jump in front of our colleagues from the other groups. Thank you, sir.

Senator MELCHER. Thank you. Our last witness today is David Masselli, Western Organization of Resource Councils. David?

STATEMENT OF DAVID MASSELLI, THE WESTERN ORGANIZATION OF RESOURCE COUNCILS ON BEHALF OF THE SIERRA CLUB AND FRIENDS OF THE EARTH

Mr. MASSELLI. I am happy to be here on behalf of the Western Organization of Resource Councils. I think you are well aware of the councils, including their Northern Plains Resource Council affiliate.

And my testimony today is also submitted on behalf of the Sierra Club and on behalf of Friends of the Earth. All of these organizations have worked on coal leasing for a long time.

We were all here forever, it seemed in the last session. And when we were here in the last session, we said that although we opposed changes in 2(c), and we opposed changes in Section 3, we did not oppose changes in Section 7.

We have looked at your bill and we have looked at the Administration's bill. And my view is that what is in your bill is very close to the way we think Section 7 should be modified.

I would like to point out perhaps two or three changes that we would propose in the way that S. 1120 works. With respect to extending the 10-year diligent development deadline, we have no problem with that with respect to people who have leases that they have gotten since 1976. Leases that they have paid good money for.

We have some difficulty with the notion of diligence extension going for leases that were picked up in the 1960s. The way your bill reads now, someone who had a lease in 1960 on which no diligent development has ever been in force to date would get their first 20 years.

Then they would get the first 10 years after readjustment. And then S. 1120, or the Administration bill, would allow them to get an additional 10 years in the case of S. 1120, an additional forever in the case on the Administration bill.

We just think that somewhere you have got to draw the line. We do not have difficulty shifting that line from 10 years to 20 years. We have difficulty shifting it out to 40 years.

With respect to your advanced royalty, our position that we set out last year was that a non-recoupable advanced royalty, at a lower rate, might be preferential. Because that really makes people fish or cut bait on these leases, because they know they will never see that money again unless they mine it.

And again, I frankly view that as an issue of numbers. We have some numbers in our mind, the industry has some numbers in their mind, and your bill has numbers. And I think it is not beyond the mind of man to come up with a number on which everyone agrees.

We have also looked at the logical mining unit changes. We have no difficulty with the notion of total acreage of being switched from 25,000 total acres to 25,000 Federal acres.

We are in general agreement with the change in the contiguity requirement for the LMUs. Although we think there has got to be some kind of limit, an absolute amount.

Our concern, and we have been very upfront about it, is that in areas like Gilette where you have large coal companies with entirely separate mines, that they could come in and say, we want both Exxon mines to be a logical mining unit.

We think that you have the statement reasonable, I believe, contiguity. We think maybe if someone put in, not to exceed five miles apart, or three miles, or even one mile, that would help.

We have great difficulties with removing the 40-year mine-out position for logical mining units. And in part that is because of the changes the Department made in its Section 7 guidelines for logical mining units.

As we read them, once you create a logical mining unit, you in essence can sit on that land forever. And the only diligence requirement that now applies is the 40-year mine-out.

Should it be 45 years? Should it be 47 years? I do not know. But I think that going from a limit to no limit at all is perhaps too drastic.

I wanted to start by talking about those areas where we disagree, because there are many areas where we think this bill makes excellent changes. We agree with the automatic readjustment provision.

We think that the provision that on readjustment there should be minimum royalties, is a major change. We generally support the provisions concerning information disclosure, just so long as the language is changed slightly so that if the Secretary ever takes it in his mind to go back to the old style of holding leases, or he published a fair market value estimate and said we will not take any bids below that, that he will not go to jail for holding one of those leases. And all that takes is about a one-line change.

I would like to close by talking about something that I think is relevant both to today's hearings and yesterday's hearings. The coal industry is highly-competitive, and the winners tend to stay home and count their money. And the losers often tend to show up in front of the Congress asking for relief.

And when they do so, I think they often do not come clean on two issues. One is that if they get their relief, it is likely that someone else is going to be a loser.

And the second is, if they get their relief you can have a circle in which in the end it is like a grandstand where the people in the first row stand up and everyone along the line stands up.

And I think this is much more relevant to the royalty issue which keeps coming back and back, even though the two hearings have in theory been on valuation and on Sections 3 and 7.

Almost all of the industry witnesses have talked about royalty rates. And when you talk about that, you have to realize that if you give a break to someone, then almost by definition someone else is losing.

I was very impressed by Representative Campbell's testimony. But I also asked myself the question, if all those Colorado mines go back to work, because they have been given a royalty break, who is going to be put out of work?

A little vignette from yesterday that you were not here to hear may provide an example of this. One of the witnesses had a prepared statement which he read, in which he was making the point that because of a certain glitch, what he viewed as a glitch in the Federal coal leasing laws, a mine in Montana was essentially closed down, and most of that production was shifted to a mine in North Dakota.

Now, he prepared that, I think, believing that you would be chairing the hearing at that moment. When he read his testimony Senator Conrad was sitting in the chair. And I suspect that he viewed that glitch somewhat differently from the way you might have.

And I have a very great concern about us getting into the details of trying to make every mine in the West profitable. Because what we are going to end up doing is, we help make someone profitable, that means they get a contract that someone else loses.

And with all due respect to Assistant Secretary Griles, and I do not say that sarcastically because I have a great deal of respect for his abilities, I am scared stiff at the notion that he is going to sit down and look at the 128 producing mines in the West and start giving them each modulated royalties.

Because eventually what he is going to do when he shifts from 12 percent to 2 percent is, when I have got my 2 percent royalty, that

means I have just beaten out someone who is paying 12. So they come in and they come in and so on.

So I think that we should stick to Section 7, and I think we have the beginnings of a very workable legislation on that. And I am appreciative of having had the opportunity to present these views.

[The prepared statement of Mr. Masselli follows:]

STATEMENT OF

THE WESTERN ORGANIZATION OF RESOURCE COUNCILS

ON

S. 1120, THE FEDERAL COAL LEASING AND UTILIZATION ACT

BEFORE THE

SUBCOMMITTEE ON MINERAL RESOURCES DEVELOPMENT AND PRODUCTION

COMMITTEE ON ENERGY AND NATURAL RESOURCES

UNITED STATES SENATE
NOVEMBER 17, 1987

The Western Organization of Resource Councils appreciates this opportunity to present its views on S. 1120, the "Federal Coal Leasing and Utilization Act of 1987." The most important provisions of the proposed legislation would amend Section 7 of the Mineral Lands Leasing Act ("MLA") of 1976, which requires the diligent development of federal coal leases. The bill would also make several important changes in the way that logical mining units are administered under the coal leasing laws and provide penalties for the unauthorized disclosure of information about lease tract valuation.

The Western Organization of Resource Councils (WORC) is a regional association composed of four citizen groups: the Northern Plains Resource Council (Montana), the Powder River Basin Resource Council (Wyoming), the Dakota Resource Council (North Dakota) and the Western Colorado Congress. Our members live and work in those areas of the West most directly impacted by coal development, particularly the development of Federal coal reserves. For this reason, we have long had a deep involvement in both the Federal coal management program and the Federal surface mining and reclamation program. Decisions made by Congress and the Executive Branch concerning the ground rules for Western coal mining can dramatically effect our communities, our lifestyle, and, in some cases, what happens on the land we live on.

This testimony also represents the views of the Sierra Club and Friends of the Earth with respect to changes in legislation governing the coal leasing program.

By way of introduction, I want to make it clear that our organizations do not opposed changes to rectify inequities or inefficiencies in the Mineral Leasing Act. We believe that some provisions in S. 1120 are appropriately designed to do just that.

But we approach this legislation cautiously for two reasons. First, some provisions in this bill are not acceptable in their present form. Second, based on past experience, we fear that this bill -- or any legislation dealing with coal leasing --could become the vehicle for attempts to lower federal coal royalty payments, to reopen the debate over Section 2(c) of the Act and the role of common carrier railroads, or to roll back last year's decision allowing Section 3 of the Act to take effect. We will vigorously oppose any legislation which rolls back royalties or which amends either Section 2(c) or Section 3.

I. Background to Changes in Coal Diligence Rules

MR. CHAIRMAN, the legislation before us has significant similarities to portions of S. 2427, considered by this Committee during the 99th Congress. That legislation failed to pass because it attempted to make two totally unacceptable changes in Federal coal leasing laws:

> (a) To repeal Section 2(c) of the Mineral Leasing Act which prevented railroads and their affiliates from receiving coal leases, and
>
> (b) To gut the Section 3 prohibition against the receipt of new Federal coal, oil and gas leases by companies which had held previously issued Federal coal leases for ten years or more without developing them.

This legislation does not contain any such provisions.

As you undoubtedly recall, proponents of S. 2427 predicted

doom and chaos in the coal industry if it failed to pass. They stated that a failure to gut or repeal Section 3 would bring a halt to almost all Federal mineral development. * Experience has shown that these hysterical claims were wrong. Holders of Federal coal leases reacted to the reality of Section 3 by making rational and reasoned decisions to relinquish or sell their holdings or to exit the market for new federal leases. No chaos ensued. No companies went bankrupt. And Federal coal production continued its steady growth as a crucial element in meeting our national energy needs.

During the debate over S. 2427 and its companion measure, H.R. 1934, the Western Organization of Resource Councils and other environmental groups who participated in that debate indicated -- on numerous occasions -- that our opposition to changes in Section 3 did not mean that we opposed some reasonable changes to Section 7. I would like to take the liberty of quoting, at some length, from our testimony on this subject delivered on November 8, 1985. **

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* For examples of these predictions see the testimony of J. Steven Griles, Deputy Assistant Secretary, Lands and Minerals Management Amending the Mineral Lands Leasing Act of 1920, and other Coal Related Issues, S. Hrg. 99-417, November 5, 1985, pp. 40-97 and testimony of B.R. Brown, Chairman and Chief Executive Officer, Consolidation Coal Company, supra at 193-236.

** See Statement of the Western Organization of Resource councils Before the Subcommittee on Natural Resources Development of the Committee on Energy and Natural Resources on Legislation to Amend the Mineral Leasing Act, Amending the Mineral Lands Leasing Act of 1920, and other Coal Related Issues, S. Hrg. 99-417, November 5, 1985, pp. 272-346. The views of the Sierra Club were set forth in the testimony of Brooks Yeager, Washington Representative, supra., pp. 249-272.

" Although changes in Section 3 have gotten the most attention, there has been a significant amount of agitation for changes in Section 7, which provides that all post-FCLAA leases must be producing in commercial quantities within 10 years of lease issuance or be terminated. Pre-FCLAA leases are terminated if not producing in commercial quantities within ten years of the first post-FCLAA lease adjustment.

" We are not convinced that any changes in Section 7 are warranted, but we retain an open mind on the subject. It is unfortunate that a legitimate debate over Section 7 is being entangled with the controversy over Section 3. We remain somewhat skeptical over claims that mines can not be developed within the ten year time frame. The experience in the Powder River Basin areas of Montana and Wyoming indicates that major mines can be permitted and built in far less time than that.

" However, we are willing to analyze arguments that changes in Section 7 can be made which retain the policy of encouraging diligent development while providing some added flexibility for operators who are developing a mine. We do not believe that any proposal we have yet seen is acceptable, nor do we have any particular proposal in mind. We do, however, feel that any amendment to Section 7 must comply with the following principles.

" (1) <u>It can not apply to pre-FCLAA leases.</u> Each pre-FCLAA lease is already given 30 years from issuance before the Section 7 termination applies. We

can see absolutely no justification for providing any additional relief for these leases.

" (2) It can not apply to any Preference Right Leases. Preference Right Leases are issued noncompetitively without bonus payments to applicants who demonstrate that they have discovered coal in commercial quantities. To make the commercial quantity showing, the applicant must show that he can mine and sell his coal. If a PRLA applicant were to have stated that he could not develop his lease within 10 years, he would not have been granted the noncompetitive lease. Therefore, applying any extension or relaxation of Section 7 to a preference right lease would extend a right which, in retrospect, should have never been granted.

" (3) It must deal with the increased value problem for leases issued between 1977 and the present. A longer or more flexible diligence period obviously adds to the fair market value of the lease. Presumably that additional value will be reflected in the bids and fair market value determination for leases issued after any change to Section 7 is made. But a problem arises when extending the Section 7 period for already issued leases (clearly this problem would be even greater with respect to pre-FCLAA leases if principle #1 was not observed). Bids were made and fair market value was determined for these leases based on the presumption that these leases would be terminated in ten years if not developed.

" As the Linowes Commission noted *, unilateral extension of the diligence period confers a benefit on those who bought leases with a ten year diligence period. This problem is not obviated by proposals which require payments for diligence extension. If the same payments are required for new leases with a higher fair market value and older leases initially issued at something of a discount, the inequity continues.

" (4) The application to bypass and production maintenance leases. Many of the post-FCLAA leases were "maintenance" and "bypass" leases. These leases were, for all practical purposes, drawn to the specifications of the holders of existing leases to enable continued production. Often the tract delineation process effectively excluded competition for valuable coal deposits and occasionally a different valuation approach -- the so-called "Josephs" split -- was applied which lowered bonus payments by half. Therefore

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* Linowes, et al., Report of the Commission Fair Market Value Policy for Federal Coal Leasing, Government Printing Office, February 1984, pp. 292-299.

The Commission's Recommendation VII-1 called for an extension of the ten year diligent development requirement for pre-1976 leases, but it stated:

> While concluding that advance royalties are desireable for new leases, the Commission was concerned that leases issued between 1976 and any congressional action on this matter might obtain an undesirable windfall gain. Leases during this period would have been sold on the basis of an assumed inflexible 10-year requirement (although some bidders might have considered the possibility of subsequent relaxation). If Congress takes up revision of diligence requirements for new leases, it should address the treatment of this special category of existing leases as well.

we think that any proposal for change in Section 7 should be developed in light of consideration of this issue.

" (5) The proposal should not discourage production. An anomaly in most current Section 7 revision proposals we have seen results in the following situation: an operator who meets Section 7 diligence and then falls before the one per cent per year continuous operation requirement will face a far stiffer economic penalty than an operator who never even attempts to met the ten year diligence requirement.

" The operator who originally met diligence will pay as much for one year of non-production as the operator who did not does in four years and as much in two years as the latter would pay in six. This is because the penalty for failing to meet continuous operation is based on the royalty which would have been paid if one per cent had been mined while the diligence extension payments are based on a sliding scale that begins at one-tenth that amount.

" These principles are not absolute, but they provide an approach to Section 7 which may allow consensus."

We continue to stand by these principles, along with the views we expressed in the last Congress concerning proposed changes to the rules governing logical mining units. We believe that S. 1120 moves in the direction of addressing many of our concerns, but it still needs significant amendment.

II. Analysis of Key Provisions of S. 1120

We have analyzed ten changes in existing law which are made by S. 1120. A brief review of each change and our opinion of the change is contained below.

1. Leases held for Reclamation. Section 101 (page 2, lines 3-14). This provision exempts from the operation of Section 3, which penalizes those who have held a nonproducing coal lease for 10 years, a coal lease which has been mined out and is currently being held for purposes of complying with SMCRA reclamation requirements.

This provision is not objectionable. Our support for Section 3 was to prevent people from holding old coal leases for future speculation. Clearly, a mined out lease is not being held for speculation.

2. Penalties for Disclosing Information. Section 102 (page 2, line 15 - page 3, line 10). This provision makes it a crime to disclose information concerning presale appraisal information about a coal lease. It is designed to prevent a repeat of the leaks which occurred before the Powder River lease sale and is in response to a recommendation of the Linowes Commission.

We strenuously opposed the previous version of this provision in S. 2427 because it was cleverly written to forbid disclosure of information about lease sales at any time, thereby effectively shielding the Department from any scrutiny after a lease sale. This version limits the period of nondisclosure to the time before the lease sale, thereby allowing postsale examination.

However, this provision has an unexpected and damaging

consequence: it mandates use of the minimum acceptable bid method of lease sales adopted by the Watt Department of Interior for the Powder River lease sale by making illegal the fair market value method successfully used prior to that fiasco. Until the Powder River sale, the Department published its estimate of fair market value. Bidders were put on notice that any bid below that amount would be rejected. The highest bid above that amount was accepted.

Secretary Watt's harebrained economic strategists argued that the fair market value approach cut people out of the bidding. They set up a system in which a less than fair market value "minimum acceptable bid" was published and all bids above that amount were reviewed. They then used the bids that came in to weigh or "correct" their unpublished internal estimate of fair market value. *

The use of such a minimum acceptable bidding floor was based on an analogy to stamp auctions. It was argued that a minimum bid strategy allows bidders to enter an auction and they are then swept up in a 'bidding frenzy' and end up spending far more than they planned to. However, coal bids are submitted in secret and no follow-up bidding is allowed, which renders the analogy--weak to begin with as stamps are far more fungible than coal

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* By way of example, assume the Department wants to lease a coal tract with a fair market value of $1,000,000. Under the old system, the lease sale notice would say, you must bid $1,000,000 to get this lease. The highest bid over $1,000,000 would be accepted. If there were no bids over $1,000,000, then the tract wasn't sold. Under the new system, a notice would go out saying that all bids above $300,000 will be accepted. If bids of $300,000 and $500,000 came in, they could be weighed in with the previous estimate of $1,000,000 and the post sale panel might decide -- as it did in Powder River -- that the bid of $500,000 really was fair market value.

tracts -- basically inapplicable.

Interior should return to the old system, where the estimate of fair market value was published ahead of time and could be contested if too low. This information disclosure provision would send the Secretary to jail if he conducted a lease sale identical to all but one previously held.

If the minimum acceptable bid method is used, then it should be illegal to disclose the internal estimates before sales. But this provision must be rewritten so it does not prevent a return to the proven fair market value method. This can be done by adding a sentence which reads "This section shall not apply to the disclosure by the Secretary or any agency of the Department of an estimate of the fair market value of a proposed lease tract which is published in the Federal Register, or otherwise publicly distributed, prior to a lease sale for purposes of indicating the Department's estimate of fair market value or the rationale for that estimate."

3. Contiguity for logical mining units. Section 103(a) (page 3, lines 11-17). This provision would change the current requirement that a logical mining unit be contiguous.

We recognize that the current absolute requirement may pose problems for some operators, although we have yet to see a concrete example. Eliminating the contiguity requirement could allow the inclusion in an LMU of two entirely separate mines in an area. Around Gillette, Wyoming, many coal companies operate two mines which sometimes supply coal under the same contract. A similar pattern exists in Montana. This may well be a prudent business practice, but such 'double mines' should not be included in a single logical mining unit.

There may be a need to deal with situations where an

intervening strip of land or right of way separates two tracts of land. But the term "reasonable proximity" is too inexact. We believe the law should specify a maximum boundary distance between leases in the LMU and recommend a maximum one mile distance between lease boundaries.

4. Elimination of the Forty Year Mineout Requirement for Logical Mining Units. Section 103(b) (page 3, lines 18-20). Current law requires that any logical mining unit be mined out in forty years. S. 1120 would repeal that provision.

The forty year mineout requirement serves as a backstop diligence provision. It was designed to insure that mega-mines have some close out date. Recently promulgated guidelines on Section 7 diligence for logical mining units all but exempt logical mining units from any other diligence requirements. So the forty year mineout provision may be the only production incentive provision that applies to largest mines.

There is no compelling argument in favor of repealing this provision. The Federal government benefits from the forty year mineout: it receives greater revenues as a royalty recipient and it implements a critical portion of its national energy strategy by promoting the rapid development of large and efficient mines. We strongly oppose this provision.

5. Size of a Logical Mining Unit. Section 103(c) (page 3, lines 21-24). Current law limits the maximum size of a logical mining unit to 25,000 total acres, including Federal and non-Federal coal. This provision would change that limit to 25,000 acres of federal coal, i. e. non-Federal coal would not be counted.

We have no opposition to this provision, so long as the forty year mineout provision remains in place.

6. Royalty Rates and Readjustment. Section 104(a) (page 4, line 4 - page 5, line 15). This provision constitutes a complete rewrite of the current section 7(a) of the Mineral Leasing Act, 30 U.S.C. 207(a). In general, we support the new language but believe changes are needed in two areas: the proposed exemption for 'special bituminous mines,' and the treatment of automatic readjustments. We would also like to comment about the minimum royalty provision.

Exemptions from the 12.5% Minimum Royalty. At lines 16-20, the section continues the existing 12.5% royalty subject to two exceptions. The two exceptions to the 12.5% royalty are set forth at lines 21-24. The first, for underground leases, continues the provision in current law and is entirely appropriate. The second is for 'special bituminous mines.' In plain English this is designed to provide a multi-million dollar royalty break for two mines in Wyoming.* Special bituminous mines -- pit mines for all practical purposes -- are somewhat more difficult and expensive to mine and, for that reason, they have already been given a cartload of breaks from reclamation requirements under SMCRA. Given that fact, there is no reason for any further break. Any royalty relief for such mines should come pursuant to the royalty reduction provisions of the MLA.

Minimum Royalties For Exempted Categories. Where underground reserves are involved the 12.5% FCLAA royalty does not apply. The same would be the case were legislation to pass creating an

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* There are currently two special bituminous mines: Skull Point and the neighboring Pittsburgh and Midway Mine, both located near Kemmerer, Wyoming. Both were issued prior to the passage of FCLAA and are paying royalties at the rate of 17.5 cents per ton. The Skull Point mine is facing readjustment as a result of the FMC Wyoming v. Hodel decision. The Pittsburgh and Midway Mine has benefitted from a 'waived readjustment,' but is scheduled for a subsequent readjustment in 1988.

exemption for 'special bituminous mines. ' Current law sets no minimum royalty where the exceptions apply. This loophole needs to be closed. S. 1120 will close the loophole where a readjustment takes place by setting an 8% minimum. We strongly support this provision.

Recent events demonstrate the need for such a change. The Department had, by regulation, established a standard 8% royalty for underground leases pursuant to regulations promulgated at 43 CFR § 3473.3-2(a)(3). This 8% standard was applied when pre-1976 leases for underground coal were readjusted to bring them into compliance with the Federal Coal Leasing Act Amendments of 1976 ("FCLAA").

However, the appellate court decision in Coastal States Energy Company v. Hodel, 816 F. 2d 502 (10th Cir., 1987) has indicated that because lower royalty amounts are permissable under the regulation, the Department must engage in an expensive and complex fixing of such rates on a case-by-case basis whenever a readjustment takes place. The Department may also remove the present 5% absolute royalty minimum for underground leases simply by amending its regulations. It is our understanding that the Department has in the works a set of guidelines that have the effect of lowering the allowable underground minimum below 8%. This will inevitably put a downward pressure on the royalty rates for surface coal and will provide an unwarranted windfall to the holders of underground coal reserves.

We believe that the prior regulatory standard of 8% reflected sound practice and should be made a part of the statute. Under S. 1120, pre-FCLAA underground leases would be automatically readjusted to 8%, following Departmental practice of the past decade. The only variance from a statutory minimum should come through the royalty reduction process prescribed by 43 CFR § 3485.2(c)(1). While the recent Departmental guidelines

on royalty reductions are seriously flawed, they at least require the submission of actual financial data from operations before any reduction can be granted.

Automatic Readjustment. The final portion of this section sets up special rules for automatic readjustment of pre-FCLAA leases, page 5, lines 3 - 15. * Since the initial formulation of this section, that the 10th Circuit has properly affirmed the authority of the Secretary to readjust leases issued before 1976 to the 12.5% FCLAA minimum in FMC Wyoming Corporation v.Hodel , 816 F. 2d 496 (10th Cir., 1987), a case in which the owners of

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* The inexcusable failure of the Department of the Interior to readjust many outstanding pre-FCLAA leases to the 12.5% royalty was originally brought to public attention in WORC's 1985 testimony before this subcommittee. In response to questions from Senator Johnston, the Department admitted that the problem existed, but disputed our assessment of its magnitude. Since that time, the General Accounting Office has confirmed the true scope of the problem. In its recent report Mineral Revenues: Coal Lease Readjustments Remedied but Not All Revenue is Collected, GAO/RCED-87-164, August, 1987, GAO estimates that the waived readjustments of 149 federal coal leases could potentially cost the government up to $187 million in royalty payments.

It is our view that the language of the FMC case does allow the government to retroactively readjust many of these 149 leases. It is important to make clear that this administration was not responsible for most of the failures of timely readjustment and that it has instituted administrative measures designed to address the problem. Our quarrel with the Department is over whether it should live with the self-imposed restriction of a series of badly reasoned Interior Board of Land Appeals cases when the Tenth Circuit has clearly limited the impact of the Rosebud case upon which they were based. We believe that the response of the Department in its November 25, 1985 letter to Senator Johnston (see Amending the Mineral Lands Leasing Act of 1920, and other Coal Related Issues, S. Hrg. 99-417, November 5, 1985, pp. 69-73) is simply not sustainable in light of the clear langauge of the FMC decision and that the Department should take immediate action to test its ability to collect these funds. In light of current fiscal conditions, we are at a loss to explain the Department's passive response to this opportunity to recoup this revenue.

the Skull Point mine sought to avoid paying the FCLAA royalty on readjustment.

We continue to support the statutory scheme for automatic readjustment contained in S. 1120. In light of the FMC decision, it is important that the legislative history of this section make it be absolutely clear that this section is "ratifying" the FCLAA provision that pre-FCLAA coal leases would pay the 12.5% minimum royalty on readjustment, while providing a better and automatic administrative mechanism to bring about the readjustments and avoid the problem of "waived readjustments." Otherwise passage of this section might be construed as implying that FCLAA did not originally require that the 12.5% royalty be applied to these old leases. In addition, we think it important that it be made clear that passage of this provision not imply that the Department is powerless to seek readjustment of 'waived readjustments.'

7. Diligent Development. Section 104(b) (page 5, line 17-page 6, line 19). Under current law and regulations, a lessee must have produced 1% of the minable reserves in a lease within a 10 year period or the lease is cancelled. For post-FCLAA leases, the ten year period begins with the granting of the lease. For pre-FCLAA leases, the period begins on the first post-FCLAA readjustment.

The diligent development provisions of S. 1120 track the provisions of S. 2427 and establish a new diligent development and advanced royalty schedule. At the end of the initial ten year period, the leaseholder can extend the life of the lease in one of two ways: (1) he can pay an advance royalty which is calculated as if he had produced 0.3 per cent of the minable reserves or (2) if he has made a "substantial investment" the lease is extended with no advance royalty. At the end of the fifteenth year, the lease can be further extended if the leaseholder has made a "substantial investment" and pays an

advance royalty based on 0.7 per cent of recoverable reserves. If diligent development is not achieved by the end of the twenty year term, the lease is terminated.

The advance royalties paid under this provision are recoupable; they can be set off against royalties later due for production taking place before the twentieth year. Thus, if in years 11 and 12 or 15 and 16 a leaseholder pays $100,000 in advance royalties under this provision, he can deduct that amount from production royalties he might owe in year 13 or 17 or 20, but not any later year.

Our past position on the use of advance royalties to extend the diligent development period has been set forth above in the material quoted from our previous testimony. In brief, it is based on the following principles:

(1) They should not apply to pre-FCLAA leases. These leases will have already had thirty years to produce by the time the extension period begins. Thirty years is enough time to develop.

(2) They should not apply to PRLA's, whenever granted. The holders of PRLA's received noncompetitive leases without bonus bids based on their showing that coal had been discovered in 'commercial quantities' at the time the lease was issued and the applicant was ready to develop the coal. The failure to develop within the statutory time frame applicable at the time the lease was granted is a clear indication that commercial quantities were not discovered within the meaning of the MLA.

(3) We strongly prefer a non-refundable advance royalty--even if at a lower rate than proposed in S.1120 -- as a real incentive for lessees to make an early decision on whether they will develop a lease or not. Recoupable royalties cost only the time value of money. Furthermore, once recoupability is

established as the standard, inexorable pressures build up for continued extensions or refunds should mining not occur.

In light of the availability of the "substantial investment" option for avoiding the royalty, non-recoupability seems appropriate for those who have not made such expenditures.

(4) If a recoupable royalty is used, the rate should be identical with that required for leases which were in violation of the continuous operations provision, e.g. a royalty rate based on assumed production of 1 per cent of recoverable reserves. To do otherwise creates the anomalous situation where a lessee who had met diligent development by producing one percent of reserves and then dropped below that level would have to pay a higher advance royalty than a lessee who had never produced at all.

8. Continuous Operation. Section 104(c) (page 6, line 20-page 7,line 17). Current law lumps both diligent development and continuous operation requirements for a coal lease together in Section 7(b) of the Mineral Leasing Act, 30 U.S.C. 207(b). Technically, diligent development requires that a certain amount be mined prior to a specific date (in current law, one per cent of recoverable reserves before the end of the tenth year), while the continuous operation requirement defines a rate of production which must be maintained in each year after diligent development is first met.

S. 1120 essentially restates the current law with respect to continuous operations as a new Section 7(c). The one per cent per year production rate (computed on a rolling three year average so that a high production year can offset an earlier or later low production year) can be suspended by the payment of advanced royalties based on the assumed production of one per cent per year. These advance royalties are refundable against later

production royalties, except that advance royalties within a given 20 year period can not be used to offset production royalties in a later 20 year period.

Under S. 1120, the continuous operations advance royalties paid by a lease which has met diligent development are higher than the diligent development advance royalties created by the section discussed above.

9. Operation and Reclamation Plan. Section 104(d) (page 7, line 18 - page 8, line 2). An operation and reclamation plan must be submitted within three years of lease issuance and prior to causing any significant disturbance on the leasehold.

S. 1120 drops the three year requirement and makes the leaseholder submit the plan prior to taking any significant action. In the past, WORC has not opposed dropping the three year requirement. This is so early in the life of most leases and so far before development that the document is often of little use. However, we believe that the document should be submitted some minimum time before the first significant disturbance takes place.

10. Definitions. Section 104(e) (page 8, line 3 - page 9, line 8). The Mineral Leasing Act is notoriously short on statutory definitions of some key terms. They have generally been defined by regulations.

S. 1120 provides statutory definitions of three key terms, based on the current regulatory treatment of those terms. 'Commercial quantities' is defined as one per cent of recoverable reserves. 'Diligent development' is defined as production in commercial quantities. 'Continuous operation' is defined as production of not less than 'commercial quantities' in each of the first two years following achievement of 'diligent

development' and then a rolling three year average.

None of these definitions are objectionable.

The bill also gives a definition to 'substantial investment.' Expenditure of a substantial investment on a lease allows diligent development to be extended with no advance royalty through year fifteen and is a requirement, along with royalty payments, for extension through year twenty. A leaseholder has made a substantial investment if he has submitted an application for a mine permit under Section 506 of SMCRA and made expenditures of five cents per ton of recoverable reserves for (1) exploration under the lease, (2) planning under the lease or (3) development and construction of facilities in the mine plan area.

During the last session WORC supported a 10 cents per ton expenditure minimum. WORC also expressed concern over allowing expenses for 'exploration' or 'planning' unless they were defined in such a way as to be lease specific so as to prevent a leaseholder from allocating its general costs to meeting the limitation. Therefore, we oppose this specific definition of "Substantial investment."

III. Proposals for Changes in the Mineral Leasing Act.

Having reviewed S. 1120, we would make the following suggestions for changes to the Mineral Leasing Act:

(1) Extensions of the ten year diligent development period should not apply to any pre-1976 leases or to preference right leases. We recommend that the language of proposed section

7(b)(1) on page 5 be changed to read:

> A coal lease which is not producing coal in commercial quantities at the end of ten years shall be terminated, except that a competitive coal lease which is not producing coal in commercial quantities at the end of ten years after issuance of the lease shall not be terminated prior to the fifteenth anniversary date of the issuance of the lease if the lessee has made a substantial investment in such lease or chooses to extend the lease beyond the tenth lease year through the annual payment of diligent development advance royalties.

Section 7(b)(2) on page 6 should be changed to read:

> A competitive coal lease which is not producing coal in commercial quantities at the end of fifteen years after issuance of the lease shall not be terminated prior to the twentieth anniversary date of the issuance of the lease if the lessee has made a substantial investment in such lease and chooses to extend the lease beyond the tenth lease year through the annual payment of diligent development advance royalties.

(2) The advance royalty payment should not be recoupable. Section 7(b)(3) should be amended to reflect this fact. If a recoupable advanced royalty is used, it should be based on an assumed one percent production so that the payment for a failure to meet the diligent development requirement would be the same as the payment for failure to meet the continuous operation requirement.

(3) The forty year mineout provision in Section 2(b)(2) of the Act should be retained.

(4) The total acreage allowable in a logical mining unit should be changed from 25,000 total acres to 25,000 acres of Federal coal.

(5) The contiguity requirement for logical mining units should be modified to allow the creation of noncontiguous units which are incorporated into a single mine within one mile of each other.

(6) Section 3 should not apply to nonproducing leases held solely for reclamation purposes.

(7) It should be a crime to disclose information concerning presale appraisal information about a coal lease before the lease sale unless such a disclosure is publicly authorized to inform prospective bidders of the Department's evaluation of a minimum fair market value for a lease tract.

We approach this legislation with a great deal of caution. It does not provide for additional coal production. It does not provide for additional environmental protections from the ravages of coal mining. It does not provide added revenues to either State or national coffers. It does not rationalize or streamline a leasing process which continuously fails to obtain fair market value for federal coal resources. It does make improvements in the Department's woeful royalty collection program. It is simply a relief measure for the coal industry.

We have outlined our views of areas where relief may be warranted and the nature of the relief which should be granted. We look forward to working with the subcommittee to make the needed changes in this bill.

Senator MELCHER. On this question of contiguousness, on a logical mining unit, you read our language, reasonable proximity, as to mean perhaps an indefinite proximity.

I guess I confess to not knowing what reasonable proximity is.

Mr. MASSELLI. I do not read your language as being indefinite. I have some concerns about what the Department will do with your language.

Senator MELCHER. You know, we have been doing this long enough now in the West to determine what we are talking about.

And I have a little bit of a problem with such terms as reasonable proximity. I think we have to establish that in the report, so that we get some regulations that are drafted by the Department that is reasonable.

Mr. MASSELLI. I mean, I think it is one of those things, to quote Justice Stewart, where you know it when you see it. And it may be difficult to say exactly what it is.

But I think maybe report language could help, and could just solve that problem, if it were specific enough.

Senator MELCHER. Let us see, you think that 25,000 acres total of Federal coal is reasonable as a logical mining unit.

Mr. MASSELLI. We support that provision in your bill.

Senator MELCHER. I think, going back to this contiguousness, if it were too far apart, I do not know how you would run SMCRA on reclamation.

I think you have to have them reasonably close in order to have a mining plan to satisfy SMCRA, is going to work. That is what troubles me on reasonable proximity. I think we have to establish that somehow, what we are talking about.

Does your organization believe that diligent development royalties in lieu of production should begin 10 years, as provided by S. 1120, or after 15 years, as advocated by the Department?

Mr. MASSELLI. We believe that it should start at 10 years. And we note that the Linowes Commission, when it looked at that issue, also felt that it should start in the first, people bought leases for 10 years, they paid for 10 years worth of leases.

So in the 11th year, they are starting to get something they had not originally paid for. And we think you should start paying in year 11, not in year 15.

Senator MELCHER. You are advocating 10 cents per ton as being the substantial investment requirement, rather than the five cents per ton, as we have it in S. 1120.

So tell me what your rationale is? I mean, that is double.

Mr. MASSELLI. Let me say that last year and actually two years ago, when S. 2427 and H.R. 1934 were both being considered, everyone had their computer models, everyone had their numbers that were passed back and forth.

We talked with both the industry and the Department about that particular issue at some great length, because there were provisions for substantial improvements to get you out of both Sections 7 and 3.

And I want to be honest, I cannot remember all of the details that went into our decision. But at that time, when we were working with it every day, we looked at 10, and that was the position we

took two years ago. And nothing since then has occurred to make us change that position.

Senator MELCHER. On this question of lowering the royalties in order to keep the mine in operation, the thought that crosses my mind is that I have not heard from the Department of Interior recommending reducing the royalties on oil and gas?

I do not know. I mean, I am just curious. I guess I should have asked Griles, but I did not, if it is good in coal and we allow some flexibility in coal, would it be good in oil and gas?

We have got all kinds of stripper wells that have shut down because they could not make any money by keeping them in operation.

Mr. MASSELLI. I guess I would look at it the other way, which is to say that coal seems to be the only place where we have government bureaucrats fine-tuning the profitability of private enterprises.

I view the royalty somewhat simplistically as being a lot more like a sales tax. And I think that you do not want to get into the business of saying that if this Seven-Eleven is less profitable, let us lower its sales tax.

I just think that when people buy leases they buy them based on what they think they are going to cost, and what they think they are going to make. And that people buy both good and bad coal and they make the differences knowing that they are going to pay 12.5 percent.

And the differences are based on how much they pay for the coal to start with, and how much they think they can get it for, and frankly how good they think they are at mining it cheaply.

Senator MELCHER. Well, I guess we are not adverse for some flexibility, as was demonstrated in what we did last year and what we are proposing to do this year.

But I guess I am a little bit surprised when they tell me that they want flexibility or want to utilize flexibility down to take a 12.5 percent royalty down to 2 percent. That is real flexible.

Mr. MASSELLI. Well, it is real flexibility, and it is also real money. We are talking about flows of $100 million a year and up, starting this year.

And when you play with that royalty base, you suddenly can have states that have planned on receiving revenues because they know what the coal is selling for, they know how much is going to be sold in the coming years because this is sold under contracts, suddenly discovering that their budget is $10 million short, because someone in Washington has created a royalty reduction.

Senator MELCHER. Well, thank you very much, David, for your testimony. I think you contribute to the thinking and to the suggestions for solutions here for the Committee. And I appreciate that very much.

Mr. MASSELLI. Thank you for inviting me, sir.

Senator MELCHER. We may have additional questions for the record, and I am speaking now on behalf of all of the Members of the Committee, and those questions will be submitted to the witnesses in writing.

We ask that the witnesses bear with us and provide us those answers. And for that purpose and for the purpose of leaving anybody

else that might want to submit written testimony on this hearing, we are leaving the record open for two weeks.

The Committee is adjourned.

[Whereupon, at 12:10 p.m., the hearing adjourned.]

APPENDIXES

APPENDIX I

RESPONSES TO ADDITIONAL QUESTIONS

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

DEC 4 1987

Honorable John Melcher
Chairman, Committee on Energy
and Natural Resources
United States Senate
Washington, D.C. 20510-6150

Dear Mr. Chairman:

In response to your November 18, 1987, letter we enclose herewith answers to the additional questions from you and Senator McClure, all relating to the November 17, 1987, hearing on S. 1120, held by the Subcommittee on Mineral Resources Development and Production.

We trust you will find the information helpful. If you have any additional questions, do not hesitate to contact us.

Sincerely,

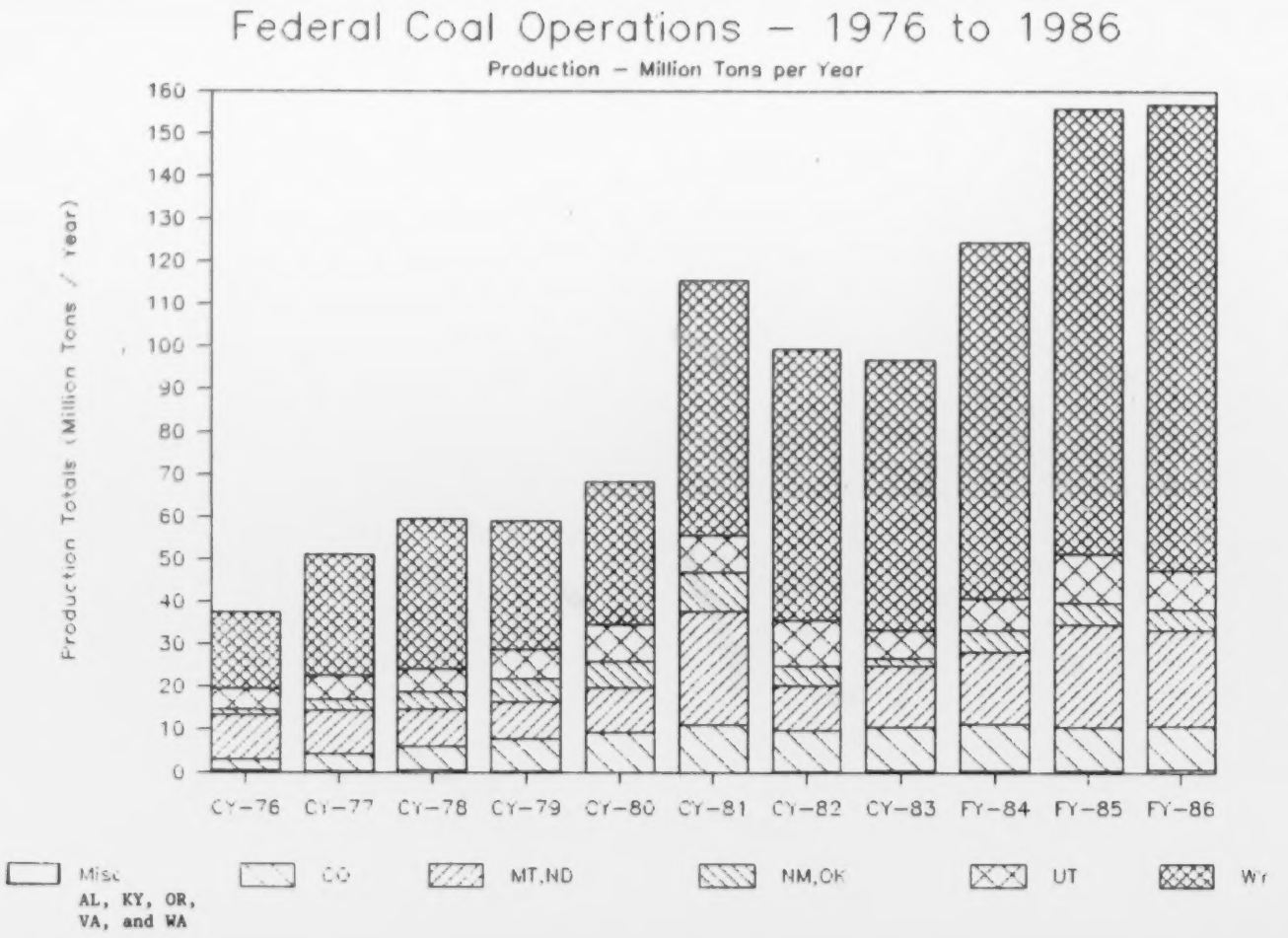
Assistant Secretary - Land and
Minerals Management

Enclosures

Questions from Senator Melcher

Question 1: What are the trends in coal production from Federal lands? Is production up or down from ten years ago? Five years ago?

Response: The following table and graph detail Federal Coal Operations from 1976 to present. Production in 1986 has increased 425 percent over 1976 level and 41 percent over the 1981 level. FY 1987 data are not yet complete but a production level similar to 1986 is projected.


Federal Coal Operations – 1976 to 1986
Production – Million Tons per Year
Production Totals (Million Tons / Year)
160
150
140
130
120
110
100
90
80
70
60
50
40
30
20
10
0
CY-76
CY-77
CY-78
CY-79
CY-80
CY-81
CY-82
CY-83
FY-84
FY-85
FY-86
Misc
AL, KY, OR, VA, and WA
CO
MT,ND
NM,OK
UT
Wy

FEDERAL COAL PRODUCTION 1976 to 1986

Million Tons Per Year

	CY-76	CY-77	CY-78	CY-79	CY-80	CY-81	CY-82	CY-83	FY-84	FY-85	FY-86	
Al, Ky, Or, Va, & Wa	0.2483	0.0856	0.2361	0.1450	0.0310	0.0180	0.1110	0.2880	0.3220	0.3580	0.8540	2.4970
Colorado	2.6510	4.0230	5.6850	7.7304	9.3920	11.1450	9.6924	10.4040	10.9670	10.3774	10.1230	92.1902
Montana	10.4919	10.4600	8.8720	8.5710	10.3940	26.7280	10.8510	14.1340	16.9970	24.0300	22.4340	183.7800
New Mexico	1.2910	2.3350	4.2610	5.4020	6.3160	9.1850	4.4040	1.5930	4.9190	5.1450	4.8250	49.6760
North DaKota	0.7650	0.7450	0.3770	1.0870	0.6060	0.8740	1.4545	1.7320	2.1070	6.2730	6.8530	22.8745
Oklahoma	0.2200	0.2280	0.2990	0.3110	0.2580	0.2570	0.2430	0.0720	0.0030	0.0300	0.0470	1.9680
Utah	4.8650	5.7883	5.3410	6.9081	8.6620	8.7215	10.9230	8.7250	7.4467	11.4370	9.4827	86.3003
Wyoming	17.9570	28.2810	35.3098	30.1210	33.4310	59.5760	63.6100	63.5380	83.6100	104.5370	109.3820	629.3528
Grand Totals	38.4893	51.9459	60.2009	60.2755	69.0900	116.5025	101.0889	98.6860	126.3717	162.1874	163.8007	1048.6388

Question 2: How many unreadjusted coal leases are outstanding?

- o Please provide for the record on a state-by-state basis the lease numbers, acreage, estimated recoverable reserves, and date of readjustment for all unreadjusted leases.

Response: As of September 30, 1987, there are 137 Federal coal leases whose terms and conditions have not been made subject to the Federal Coal Leasing Amendments Act of August 4, 1976 (FCLAA). Attached is a state-by-state analysis of these leases by BLM lease number. Because the Solid Leasable Minerals System (SLMS) readjustment data base sorts on both the first post-1970 and second post-1970 lease anniversary dates, we have underscored the anniversary date that each lease will have its terms and conditions made consistent with the requirements of FCLAA.

Bureau of Land Management

AREA	LEASE	ACRES	ANNIV. DATE	EFFEC. DATE	ANNIV. DATE	EFFEC. DATE
ABLEMER #2						
ALABAMA		2,388.13	19940601	----	----	----
ALASKA		600.00	N/A#	----	----	----
		1,280.00	19940101	----	----	----
		361.83	19950301	----	----	----
PENNSYLVANIA		50.13	1994	----	----	----
				----	----	----
		281.09		----	----	----
Total Acres		Total Reserves				

Issued in 1949 with a 50-year, non-extendable term before Alaska became a State.

MELCHER #2

COLORADO

LEASE #	LEASE ACRES	AMOTN DATE	EFFEC. DATE	AMOTN DATE	EFFEC. DATE
[illegible]	956.60	[illegible]	00000000	[illegible]	[illegible]
[illegible]	2,446.19	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	2,357.46	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	2,560.00	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	1,892.90	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	1,182.31	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	2,558.90	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	2,622.37	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	636.93	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	2,722.05	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	40.00	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	1,837.17	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	1,704.43	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	1,717.43	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	1,717.43	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	1,515.40	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	136.80	[illegible]	[illegible]	[illegible]	[illegible]
0040389	241.28	[illegible]	[illegible]	[illegible]	[illegible]
0041870	80.00	[illegible]	[illegible]	[illegible]	[illegible]
0042901	818.53	[illegible]	[illegible]	[illegible]	[illegible]
0044569	1,379.78	[illegible]	[illegible]	[illegible]	[illegible]
0047201	513.00	[illegible]	[illegible]	[illegible]	[illegible]
0055156	256.93	[illegible]	[illegible]	[illegible]	[illegible]
0056799	41.25	[illegible]	[illegible]	[illegible]	[illegible]
0056724	189.24	[illegible]	[illegible]	[illegible]	[illegible]
TOTAL ACRES	TOTAL RESERVES				
[illegible]	273,095,201				

BELCHER #2

MONTANA

LEASE	ACRES	ADMIN. DATE	EFFEC DATE	ADMIN. DATE	EFFEC DATE
[illegible]	80.00	19880303	19880303	19980301	----
[illegible]	4,306.55	19910401	----	20010401	----
NORTH DAKOTA					
[illegible]	1,000.00	19710101	19710101	19910101	----
[illegible]	2,035.71	19711101	19711101	19911101	----
[illegible]	320.00	19710501	----	20010501	----
[illegible]	40.00	19710501	----	20010501	----
[illegible]	640.00	1989[illegible]	----	19990301	----
[illegible]	2,872.38	19870301	----	19990301	----

Total Acres 12,292.62

Total Reserves 223,730,844

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MELCHER NO. 2

LEASE #	ACRES	ASSIGN. DATE	EFFEC. DATE	ABSTR. DATE	EFFEC. DATE
NEW MEXICO					
[illegible]	160.00	19890201	----	----	----
[illegible]	3,910.20	19900101	----	----	----
[illegible]	320.00	19790717	[illegible]	19892.11	----
OKLAHOMA					
[illegible]	1,347.12	19880[illegible]	----	----	----
[illegible]	1,060.65	19[illegible]	----	----	----
[illegible]	680.00	19[illegible]	----	----	----
[illegible]	355.51	19[illegible]	----	----	----
[illegible]	2,839.00	19[illegible]	----	----	----
[illegible]	4,[illegible]	19[illegible]	----	----	----

Total Acres [illegible]

Total Reserves [illegible]

MELCHER #2.

UTAH

LEASE #	ACRES	ANNIV. DATE	EFFEC. DATE	ANNIV. DATE	EFFEC. DATE
SL046612	280.00	19820402	19890402	19990402	----
SL048481	2,562.88	19901121	00000000	19901121	----
SL051579	1,548.31	19750104	00000000	19950104	----
SL062605	1,052.68	19790317	00000000	19890317	----
SL066490	2,440.00	19871231	19871231	19971231	----
SL068754	2,570.67	19710601	00000000	19710601	----
SL069291	600.00	19700401	00000000	19900401	----
SL067985	320.00	19891	----	19991101	----
SL071232	1,960.00	19700901	00000000	19900901	----
U0115656	2,560.00	19871101	19871101	19971101	----
U0115657	1,280.00	19871101	19871101	19971101	----
U0115792	1,280.00	19871001	19871001	19971001	----
U0115833	640.00	19871001	19871001	19971001	----
U0120574	1,119.81	19880501	19880501	19980501	----
U0120582	582.29	19881101	19881101	19981101	----
U0120583	320.00	19881101	19881101	19981101	----
U0120584	319.96	19881101	19881101	19981101	----
U0122647	639.26	19881101	19881101	19981101	----
U0122649	919.90	19881101	19881101	19981101	----
U0123650	1,280.00	19881101	19881101	19981101	----
U0123651	1,999.80	19881101	19881101	19981101	----
U0122652	80.21	19881101	19881101	19981101	----
U0123675	80.00	19881101	19881101	19981101	----
U0123688	200.00	19881101	19881101	19981101	----
U0126916	320.00	19881101	19881101	19981101	----
U0130980	2,560.00	19881101	19881101	19981101	----
U0130986	2,561.52	19871001	19871001	19971001	----
U0130989	2,560.00	19871001	19871001	19971001	----
U0136512	1,279.28	19871001	19871001	19971001	----
U0136936	2,557.28	19871001	19871001	19971001	----

AGENT:

MELCHER #2

UTAH

Bureau of Land Management

11-20-87

LEASE	ACRES	ADMIN. DATE	EFFEC. DATE	ADMIN. DATE	EFFEC. DATE
[illegible]	2,553.40	19871001	19871001	19871001	----
[illegible]	455.84	19750201	00000000	19750201	----
[illegible]	320.00	19750201	00000000	19750201	----
[illegible]	1,920.00	19871001	19871001	19871001	----
[illegible]	2,560.00	19890101	19890101	19890101	----
[illegible]	626.32	19780501	00000000	19780501	19780501
[illegible]	1,360.00	19920301	00000000	19920301	----
[illegible]	2,559.16	1900	000	[illegible]	19900701
[illegible]	1.00	[illegible]	00000000	19920807	----
[illegible]	1,280.00	19940501	----	20000501	----
[illegible]	633.42	[illegible]	00000000	19900701	----
[illegible]	80.00	19871001	19871001	19871001	----
[illegible]	240.39	[illegible]	00000000	19800501	19800501
U46491	1,440.00	19780501	00000000	19800501	19800501
U5267	320.00	19900701	----	20000701	----
U61071	1.00	19911101	----	19911101	----
U7653	81.00	19900901	----	19900901	----
U7949	10.00	19900701	----	20000901	----
U[illegible]	[illegible]	19900701	----	20000301	----
Total Acres	Total Reserves				
60,[illegible]	[illegible]				

MERGER 02

WYOMING

LEASE	ACRES	ANNIV. DATE	EFFEC. DATE	ANNIV. DATE	EFFEC. DATE
[illegible]	40.00	19721122	19721122	19921122	----
[illegible]	1,273.46	19750405	00000000	19950405	----
[illegible]	160.00	19710501	19710501	19910501	----
[illegible]	160.00	19790328	00000000	19880328	----
W022908	80.00	19740801	19780801	19940801	----
[illegible]	240.00	19790201	[illegible]	19890201	19890201
[illegible]	640.00	19821201	[illegible]	[illegible]	----
[illegible]	[illegible]	[illegible]	[illegible]	19971201	----
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	----
[illegible]	[illegible]	19780401	----	20000401	----
[illegible]	[illegible]	19780101	19000101	19900101	----
W014701	[illegible]	[illegible]	----	[illegible]	----
[illegible]	[illegible]	[illegible]	[illegible]	19971101	----
W03055	[illegible]	[illegible]	[illegible]	19980901	----
W055240	[illegible]	19780301	00000000	19980301	19980301
W073289	[illegible]	19790501	00000000	19990501	----
W075205	[illegible]	19790102	00000000	19890102	----
W077207	[illegible]	19790107	00000000	19990107	----
W12791	[illegible]	19790601	----	20000601	----
W13405	[illegible]	19800101	----	19900101	----
W13430	[illegible]	19810201	----	20010201	----
W13510	[illegible]	19790901	----	20000901	----
W21939	[illegible]	19910201	----	----	----
W23430	[illegible]	19910101	----	20010101	----
[illegible]	2,380.00	19911001	----	19991001	----
[illegible]	1,440.00	19891001	----	19991001	----
[illegible]	160.00	19710501	19710501	19910501	----
W3197	[illegible]	19871201	19871201	19971201	----
W3416	[illegible]	19871101	19871101	19971101	----
W3[illegible]	1,280.00	19910201	----	20010201	----

NELCHER #2

LEASE	ACRES	ANNIV. DATE	EFFEC. DATE	ANNIV. DATE	EFFEC. DATE
[illegible]	1,912.86	19871201	19871201	19971201	----
[illegible]	5,475.47	19871201	19871201	19971201	----
[illegible]	14,90[illegible].41	19960401	----	20060401	----
[illegible]	40.87	19910201	----	20010201	----
[illegible]	1,657.70	19871201	19871201	19971201	----
[illegible]	610.82	19871201	[illegible]	[illegible]	----
[illegible]	[illegible]9.99	19910301	----	20010301	----
[illegible]	20,700.71	[illegible]	[illegible]01	19971201	----

Total Acres	Total Reserves
104,[illegible]	3,248,829,737

Question 3: How many coal leases have been readjusted?

- o Please provide for the record on a state-by-state basis the lease numbers, acreage, estimated recoverable reserves, date of eligibility for readjustment, and date of actual readjustment for all leases that have been readjusted.

Response: As of September 30, 1987, 291 Federal coal leases have been successfully readjusted to the requirements of FCLAA. Attached is a state-by-state analysis of these leases by BLM lease number. Because the SLMS readjustment data base sorts on both the first post-1970 and second post-1970 lease anniversary dates, we have underscored the effective date that each lease was first readjusted to FCLAA terms and conditions.

BELCHER #3
CALIFORNIA

LEASE	ACRES	ANNIV DATE	EFFEC. DATE	ANNIV DATE	EFFEC. DATE
	80.00	19830909	19830909	19930909	----
COLORADO					
[illegible]	1,320.00	19840501	19840501	19940501	----
[illegible]	80.00	19850101	19850101	19950101	----
[illegible]	1,283.49	19[illegible]	19850601	19950601	----
[illegible]	2,255.22	19861201	19820501 #	[illegible]	----
[illegible]	80.00	[illegible]	19810801	[illegible]	----
[illegible]	3,843.60	1985[illegible]	[illegible]1001	19951001	----
[illegible]	[illegible]	[illegible]	19850101	[illegible]	----
[illegible]	[illegible]	19861001	19861[illegible]	[illegible]	----
[illegible]	[illegible]	[illegible]	19841101	19941101	----
[illegible]	[illegible]	19[illegible]	[illegible]0000	19861201	19861201
[illegible]	[illegible]	19[illegible]	[illegible]0201	19920601	----
CO23503	[illegible]	[illegible]	[illegible]1	19930301	----
CO24099	[illegible]	[illegible]	[illegible]1101	19931001	----
CO29[illegible]	[illegible]	[illegible]	19821101	19921101	----
CO29[illegible]	[illegible]	19841101	19841101	19941101	----
CO30[illegible]	[illegible]	[illegible]	[illegible]1101	[illegible]	----
CO30[illegible]	[illegible]	19[illegible]	[illegible]1101	[illegible]	----
[illegible]	[illegible]	19[illegible]	[illegible]0501	[illegible]	----
[illegible]	[illegible]	[illegible]	19850701	19950701	----
[illegible]	[illegible]	[illegible]	[illegible]1001	19910901	----
CO[illegible]	[illegible]	19851001	19[illegible]1001	19951001	----
CO[illegible]	80.[illegible]	19860101	19860101	19960101	----
[illegible]	961.[illegible]	19[illegible]0701	19[illegible]0501 +	[illegible]	----
[illegible]	[illegible]	19[illegible]0301	19[illegible]0401	19920401	----
CO[illegible]	680.00	19861201	19861201	19961201	----
CO[illegible]	809.99	19860801	19860801	19960801	----
[illegible]	1,351.84	19821001	19830816	19921001	----
[illegible]	2,519.03	19850501	19850501	19950501	----
CO812[illegible]	2,323.44	19850501	19850501	19950501	----

Per agreement between Utah International Inc. and the Secretary of the Interior.

+ Successfully readjusted to FCLAA in 1980.

BELCHER #3

LEASE	ACRES	ANNIV. DATE	EFFEC. DATE	ANNIV. DATE	EFFEC. DATE
[illegible]	2,215.28	19831101	19831217	19771101	----
[illegible]	2,280.00	19830701	19830701	19930701	----
[illegible]	2,501.34	19810501	19810701	19910501	----
[illegible]	2,517.98	19870601	19870601	19970601	----
[illegible]	571.55	19870601	19870601	19970601	----
[illegible]	160.00	19870601	19870601	19970601	----
[illegible]	2,360.71	19870601	19870601	19970601	----
[illegible]	40.00	[illegible]	[illegible]	[illegible]	----
[illegible]	4,936.36	[illegible]	[illegible]	19970901	----
[illegible]	225.86	[illegible]	[illegible]	[illegible]	----
[illegible]	439.27	19930601	19930601	19970601	----
[illegible]	200.00	19940401	19940401	[illegible]	----
[illegible]	2,740.79	[illegible]	[illegible]	[illegible]	----
[illegible]	[illegible]	[illegible]	19940801	[illegible]	----
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	----
[illegible]	[illegible]	[illegible]	[illegible] +	[illegible]	----
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	----
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	----
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	----
[illegible]	[illegible]	[illegible]	19940711	19910711	----
[illegible]	200.00	19850000	[illegible]	[illegible]	----
[illegible]	1,145.11	[illegible]	19950101	19950101	----
[illegible]	[illegible]	[illegible]	19870611	[illegible]	----
[illegible]	[illegible]	[illegible]	19811011	[illegible]	----
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	----
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	----

+ Successfully readjusted to FCLAA in 1980.

MELCHER #3

	LEASE	ACRES	ANNIV. DATE	EFFEC. DATE	ANNIV. DATE	EFFEC. DATE
MONTANA						
	M020989	1,446.35	19830505	19830505	19930505	----
	[illegible]	80.00	19820806	19841006	19920806	----
	[illegible]	800.00	19770301	19791101	19870301	19870301
	M012637	80.00	19821101	19821101	19921101	----
	[illegible]	720.00	19831001	19831001	19931001	----
	[illegible]	1,830.55	19831001	19831001	19931001	----
	[illegible]	2,360.20	19840301	19840301	19940301	----
	[illegible]	523.76	198403[illegible]	[illegible]	19940301	----
	M06770	40.00	19740101	19790101 †	19940101	----
	M069782	2,385.02	19850701	19850701	19950701	----
	[illegible]	9,409.56	[illegible]	19860801	19960801	----
	M[illegible]109	5,792.10	19860901	19860901	19960901	----
	M[illegible]292	674.40	19840301	19840301	19940301	----
NORTH DAKOTA						
	M041[illegible]ND	1,440.00	19810[illegible]	[illegible]1001	19910801	----
	M042819ND	763.83	19811001	19811201	19911001	----
	M043941ND	2,120.09	19820101	19820201	19920101	----
	M061025ND	80.00	19840301	19840501	19940301	----
	M065329ND	320.00	19841201	19841201	19941201	----
	M070203ND	400.77	19851101	19851101	19951101	----

Total Acres 31,276.83 Total Reserves 879,[illegible]35,325

† successfully readjusted to FCLAA

MELCHER #3

NEW MEXICO

LEASE	ACRES	ANNIV. DATE	EFFEC. DATE	ANNIV. DATE	EFFEC. DATE
NM0194412	1,394.32	19810801	19911201	19910801	----
[illegible]	2,046.15	19830801	19830801	19930801	----
NM0457[illegible]	2,467.24	19811101	19811101	19911101	----
NM[illegible]	2,565.60	19811101	19811101	19911101	----
NM0457[illegible]	1,800.00	19811101	19811101	19911101	----
[illegible]	2,002.06	19870701	19870701	----	----
NM0510[illegible]	2,432.94	19870701	19870701	----	----
NM0510[illegible]	2,565.40	19[illegible]	19[illegible]0701	----	----
NM0548[illegible]	640.19	19841101	19851101	19941101	----
NM0550[illegible]	2,[illegible]84	[illegible]1201	19[illegible]	[illegible]1201	----
NM0[illegible]	2,[illegible]47	19810401	19[illegible]	19910401	----
NM0[illegible]	2,511.46	19[illegible]	19[illegible]	19910401	----
NM0[illegible]	2,[illegible]	19[illegible]	19[illegible]	19940101	----
NM-[illegible]	2,[illegible]	19[illegible]	19870701	19970901	----
NM[illegible]	160.00	19[illegible]	19870201	----	----
SF04[illegible]	8[illegible]	19[illegible]	19840408	19940408	----
SF06[illegible]	[illegible]	19[illegible]	19[illegible]	19950125	----
SF071[illegible]	80.00	19[illegible]	19[illegible]	19900411	----
SF074[illegible]	80.00	19810110	19[illegible]	19910110	----
[illegible]	120.00	19[illegible]	19[illegible]	19891211	----
SF06[illegible]	80.00	19840510	19[illegible]	19940510	----
[illegible]	160.00	19[illegible]	19[illegible]	----	----
[illegible]	[illegible]	19690501	19810101†	19890501	----

OKLAHOMA

OKNM018125	2,560.33	19700901	19800701†	19900901	----
OKNM018826	965.16	19820501	19820601	19920501	----
OKNM021951	1,500.00	19710801	19800601†	19910801	----
OKNM022315	793.50	19730801	19800701†	19930801	----
OKNM022798	1,004.[illegible]	19820601	19820601	19920601	----
OKNM028369	1,000.00	19720701	19801201†	19920701	----

† Successfully readjusted to FCLAR. [redacted]

MELCHER #3
OKLAHOMA

LEASE	ACRES	ANNIV. DATE	EFFEC. DATE	ANNIV. DATE	EFFEC. DATE
[illegible]	640.00	19760501	19900701 +	19960501	----
[illegible]	2,438.96	19760401	19900701 +	19960401	----
[illegible]	2,540.52	19760901	19900701 +	19960901	19860901
[illegible]	1,170.00	[illegible]	19900701 +	19960501	----
NMNM031611	2,530.20	19761001	19900701	19861001	19861001
[illegible]	1,811.30	19771201	19900701	19871201	19871201
[illegible]	800.00	19740301	19900701 +	19940301	----
[illegible]	1,600.00		19900701	19930301	----
[illegible]	1,440.37	19731001	19771001 +	19931001	----
[illegible]	1,206.34	19810501	19911201	19910901	----
[illegible]	[illegible]	[illegible]	19900701	19920301	----
[illegible]	[illegible]	[illegible]	19900701	19920301	----
NM0736A	1,04[illegible]	19820701	19920701	19920701	----
NM0745Z1	1,541.51	19820701	19920701	19920701	----
NM0769S3	[illegible]	19830501	19900701	19930501	----
NM0804B5	1,116.17	19[illegible]	19911201	19991201	----
NM0804C	2,[illegible]	[illegible]	19911201	19991201	----
[illegible]	[illegible]	[illegible]	19911201	19990601	----
NM0829B6	[illegible]	19800401	19900701	19990401	----
NM0830J5	[illegible]	[illegible]	19900701	19920701	----
[illegible]	[illegible]	19811201	19911201	19911201	----
[illegible]	[illegible]	[illegible]	19900701	19900801	----

Total Acres [illegible] Total Reserves [illegible]

+ Readjusted to FCLRA Successfully

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NELCHER #3

OREGON LEASE	ACRES	ANNIV. DATE	EFFEC. DATE	ANNIV. DATE	EFFEC. DATE
OREG012472	2,354.23	19820601	19821101	19920601	----
OREG03520	2,519.55	19790119	19800201	19890119	----
OREG052	537.50	19770601	19781201	19870601	----
WASHINGTON					
WASH04	280.00	19811101	19820101	19911101	----
Total Acres	Total Reserves				
5,671.28	47,165,000				

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UTAH

LEASE	ACRES	ANNIV. DATE	EFFEC. DATE	ANNIV. DATE	EFFEC. DATE
SL0[illegible]431	1,261.99	19830208	19830208	19930208	----
SL027304	235.96	19850901	19850901	19950901	----
[illegible]	1,284.42	19810617	19811101	19910617	----
[illegible]	1,791.12	19830904	19830904	19930904	----
[illegible]	80.00	19860910	19860910	19960910	----
SL046852	962.36	19810803	19820501	19910803	----
SL048223	120.00	19700405	19790601†	[illegible]	----
SL049043	40.00	19770915	[illegible]	19870814	19870814
[illegible]	80.00	19730801	19790601†	19910801	----
[illegible]	240.00	19780601	19790501	19880601	19880601
SL050641	160.00	19791206	19800801	19901206	----
SL050862	280.00	19770805	[illegible]	19870805	19870805
SL051221	80.00	19741104	19790601†	19941104	----
SL050575	155.74	19761008	[illegible]	19861008	19861008
SL042583	2,199.03	19810911	19810911	19910911	----
SL062648	161.13	19820102	19831001	19920107	----
SL062966	1,366.89	19831112	19840101	19931112	----
SL063011	280.00	19811128	19820601	19911128	----
SL063058	400.00	19820803	19820803	19920803	----
SL063720	200.00	19821217	19840101	19921217	----
SL064507	320.00	19841101	19841101	19941101	----
SL064607	213.92	19841004	19841004	19941004	----
SL064709	160.00	19850203	19850203	19950203	----
SL066116	520.00	19750601	19790701†	19950601	----
SL066195	1,552.17	19860619	19860619	19960619	----
SL070845	2,560.00	19720401	19790601†	19920401	----
SL071561	80.00	19710301	19790601†	19910301	----
U0101140	1,600.00	19870401	19870401	19970401	----
U0101141	1,760.00	19870401	19870401	19970401	----
U0101147	1,562.00	19870401	19870401	19970401	----

†Successfully readjusted to FCLAA.

BELCHER #3
UTAH

LEASE	ACRES	ANNIV. DATE	EFFEC. DATE	ANNIV. DATE	EFFEC. DATE
U0101153	1,000.00	19830501	19830501	19930501	----
U0103107	2,560.00	19870901	19870901	19970901	----
U0103108	2,560.00	19870301	19870301	19970301	----
U0103109	2,557.36	19870901	19870901	19970901	----
U0103129	2,560.00	19870901	19870901	19970901	----
U0103130	2,554.88	19870901	19870901	19970901	----
U0103131	2,560.00	19870401	19870401	19970401	----
U0103132	1,271.68	19870401	19870401	19970401	----
U0103133	1,273.16	19870401	19870401	19970401	----
U0103141	960.88	19870901	19870901	19970901	----
U0105404	1,529.42	19850601	19850601	19950601	----
U0105418	2,560.00	19870901	19870901	19970901	----
U0105819	1,842.39	19760201	19790301 +	19960201	----
U0113254	160.00	19870801	19870801	19970801	----
U0115791	2,560.00	19870701	19870701	19970701	----
U0115793	1,280.00	19870701	19870701	19970701	----
U0115938	1,720.76	19851201	19851201	19951201	----
U0118366	1,920.00	19851101	19851101	19951101	----
U0120794	1,920.00	19860301	19860301	19960301	----
U0122623	200.00	19860401	19860401	19960401	----
U0126947	1,992.15	19831101	19840201	19931201	----
U0126948	2,523.22	19831201	19840201	19931201	----
U0130988	1,907.24	19870701	19870701	19970701	----
U0140770	518.60	19850101	19850301	19950101	----
U0142235	520.00	19841001	19841001	19941001	----
U014275	80.00	19751001	19790601 +	19951001	----
U0146345	1,160.00	19851101	19851101	19951101	----
U0146654	2,560.00	19851201	19851201	19951201	----
U0147570	2,092.70	19860501	19860501	19960501	----
U0147999	319.97	19860501	19860501	19960501	----

+ Successfully readjusted to FCLMA.

ASPEN #

BELCHER #3

UTAH

LEASE	ACRES	ANNIV. DATE	EFFEC. DATE	ANNIV. DATE	EFFEC. DATE
U0149084	240.00	19860601	19860601	19960601	----
U0149582	560.00	19860901	19860901	19960901	----
[illegible]	1,028.47	19760901	~~00000000~~	19860901	19860901
[illegible]	645.12	19770601	~~00000000~~	19870601	19870601
[illegible]	1,437.40	19820301	19820301	19920301	----
[illegible]	1,708.66	19810601	19830301	19910601	----
[illegible]	120.00	19780401	19800801	19880401	19880401
[illegible]	400.00	19780501	19800801	19880501	19880501
[illegible]	400.00	19780501	19790601	19880501	19880501
[illegible]	80.00	19780501	19800801	19880501	19880501
[illegible]	1,040.00	19800501	19811201	19900501	----
U0240[illegible]	36.70	[illegible]	[illegible]	[illegible]	[illegible]
U0265[illegible]	1,669.00	19810[illegible]	19[illegible]0401	19910201	----
U0400[illegible]	1,720.00	19820301	19820301	19920301	----
U0440[illegible]	40.00	[illegible]0001	19820701	19900801	----
U0440[illegible]	2,767.87	[illegible]0[illegible]	[illegible]0201	19900701	----
U0533[illegible]	160.00	19820301	19840101	19920301	----
U0588184	693.89	19810621	19811101	19910621	----
U0603[illegible]	1,360.00	19730501	19790601+	19930501	----
U0607[illegible]	2,402.89	19811101	19830301	19911101	----
U0607[illegible]	2,324.22	19811101	19830301	19911101	----
U06[illegible]	480.00	19820301	19820301	19920301	----
U0650[illegible]	754.89	19811101	19830301	19911101	----
U0[illegible]	501.70	19820101	19840101	19920101	----
U07[illegible]	2,416.14	19770101	~~00000000~~	19870101	19870101
U073120	557.22	19840201	19840201	19940201	----
U0807[illegible]	80.00	19820701	19830701	19920701	----
U0830[illegible]	1,440.00	19841201	19841201	19941201	----
U0830[illegible]	640.00	19840801	19841001	19940801	----

+ Successfully readjusted to FCLAP.

RELCHER #3
UTAH

LEASE	ACRES	ANNIV. DATE	EFFEC. DATE	ANNIV. DATE	EFFEC. DATE
U083066	2,485.00	19820301	19820301	19920301	----
U0[illegible]	1,040.00	19820701	19820701	20020701	----
U0[illegible]	2,252.42	19840801	19840801	19940801	----
U084924	1,211.48	19840801	19840801	19940801	----
U08606	40.00	19731001	19810101 +	19931001	----
U087805	2,064.44	19851101	19851101	19951101	----
U087806	1,945.32	19851101	19851101	19951101	----
U087807	1,920.00	19851101	19851101	19951101	----
U087828	2,560.00	19851101	19851101	19951101	----
U087833	2,517.68	19851101	19851101	19951101	----
U087834	2,560.00	19851101	19851101	19951101	----
U087835	1,920.00	19851101	19851101	19951101	----
U087836	640.00	19851101	19851101	19951101	----
U092138	1,991.84	19851101	19851101	19951101	----
U092139	1,978.24	19851101	19851101	19951101	----
U092140	2,020.48	19851101	19851101	19951101	----
U092141	1,922.56	19851101	19851101	19951101	----
U092142	1,750.20	19851101	19851101	19951101	----
U096476	2,551.52	19870301	19870301	19970301	----
U096477	1,276.68	19870701	19870701	19970701	----
U096486	640.00	19851101	19851101	19951101	----
U096494	2,560.00	19851101	19851101	19951101	----
U096495	2,559.84	19851101	19851101	19951101	----
U096496	2,560.00	19851101	19851101	19951101	----
U096497	2,560.00	19851101	19851101	19951101	----
U096508	658.28	19860401	19860401	19960401	----
U096509	1,478.70	19851101	19851101	19951101	----
U098705	2,286.74	19830501	19830501	19930501	----
U098774	2,487.60	19850601	19850601	19950601	----
U098775	1,599.36	19850601	19850601	19950601	----

+ Successfully readjusted to FCLAA.

RELCHER #3

UTAH

LEASE	ACRES	APPLN. DATE	EFFEC. DATE	ANNIV. DATE	EFFEC. DATE
U098783	2,540.64	19870501	19870501	19970501	----
U098784	2,537.69	19870501	19870501	19970501	----
U098785	2,542.84	19870501	19870501	19970501	----
U098786	2,549.60	19870301	19870301	19970301	----
U098787	2,560.00	19870501	19870501	19970501	----
U1358	320.00	19870801	19870801	19970801	----
U24427	1,280.00	19870301	19870301	19970301	----
U25484	633.84	19810617	19810804	19910617	----
U27835	639.92	19851101	19851101	19951101	----
U61048	1,108.27	19830208	19830208	19930208	----

Total Acres 172,078.25

Total Reserves 2,301,534,188

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MELCHER #3

WYOMING

LEASE	ACRES	ADMIN. DATE	EFFEC. DATE	ADMIN. DATE	EFFEC. DATE
[illegible]	397.75	19841008	19841008	19941008	----
[illegible]	120.00	19730531	19780531 +	19930531	----
[illegible]	40.00	19810401	19820408	19910401	----
W0136194	321.52	19810601	19810401	19910601	----
W0136197	1,476.54	19810601	19810401	19910601	----
W0136196	1,560.00	19810601	19810401	19910601	----
W0146107	640.00	19840101	19840101	19940101	----
W0150169	640.00	19840101	[illegible]	19940101	----
W0244167	1,802.71	19830601	19830601	19930601	----
W0294513	518.51	19840701	19840701	19940701	----
W0312916	3,779.33	19850601	19850601	19950601	----
W0313666	1,360.00	19851001	19851001	19951001	----
W0313668	1,880.00	19851001	19851001	19951001	----
W0313713	3,[illegible].96	19850901	19850901	19950901	----
W0317[illegible]	[illegible],360.31	19850901	19850901	19950901	----
W0321779	[illegible],[illegible].16	19861201	19861201	19961201	----
W0321[illegible]	2,760.42	19861201	19861201	19961201	----
W0322256	1,783.22	19861201	19861201	19961201	----
W038602	2,[illegible].11	19760601	19760601 +	19960601	----
W041355	[illegible].00	19760702	19780702 +	19960702	----
W054720	1,263.72	19811101	19811101	19911101	----
W054720	640.00	19811101	19811101	19911101	----
W054737	[illegible].00	19811101	19811101	19911101	----
W056471	960.25	19820401	19831001	19920401	----
W060241	1,408.23	19830301	19830301	19930301	----
W060274	745.38	19830301	19830615	19930301	----
W061421	1,280.00	19830301	19830301	19930301	----
W061422	1,920.82	19830301	19830301	19930301	----
W2313	5,761.26	19861201	19861201	19961201	----
W49644	91.15	19850901	19850901	19950901	----

+ Successfully readjusted to FCLAA.

MELCHER #3

WYOMING LEASE	ACRES	ASSIG. DATE	EFFEC. DATE	ASSIG. DATE	EFFEC. DATE
[illegible]	320.36	19861201	19861201	19961201	----
[illegible]	1,961.58	19861201	19861201	19961201	----
[illegible]	240.00	19910401	19910308	19910401	----
[illegible]	1,041.99	19861201	19861201	19961201	----

Total Acres [illegible]

Total Reserves 2,656,448,926

Question 4: How many readjustments are currently under appeal?

Response: As of September 30, 1987, there were 94 Federal coal leases with appeals pending. Of these 94 leases, 68 had appeals pending with the Interior Board of Land Appeals (IBLA), 19 had appeals pending in various District Courts and 7 had appeals pending in various Circuit Courts.

Question 5: How many leases have become subject to the prohibition on obtaining mineral leases imposed by section 2(a)(2)(A) of the Mineral Leasing Act of 1920 since August 1986? How many lessees do you expect will become subject to this prohibition over the next 5 years?

Response: During FY86 and early FY87, the Bureau of Land Management (BLM) began monitoring all Federal coal leases specifically for compliance with Section 2(a)(2)(A). Since October 1987, BLM has been preparing lists of potential noncompliance Federal coal leases and a list of entities disqualified to be issued any MLA lease due to the Section 2(a)(2)(A) prohibition. As of December 31, 1986, there were 136 noncompliance Federal coal leases held by 56 lessees. There were an additional 49 Federal coal leases that would otherwise disqualify the lessees were it not for pending actions on file with BLM (i.e., applications for logical mining units that would be producing as of the effective date of the approval, arm's-length assignment requests, and relinquishments). As of the most recent update on November 4, 1987, there were 110 noncompliance Federal coal leases held by 36 lessees. There are an additional 45 Federal coal leases that would otherwise disqualify the lessees were it not for pending actions on file with BLM. A copy of the November 4, 1987, list of disqualified entities and computer printouts showing the Federal coal leases in question is attached.

To project how many lessees are expected to become disqualified over the next 5 years, the following assumptions must be made: 1) all Federal coal leases that are currently producing will remain producing without being mined out; 2) all approved and pending LMU's that are producing will continue to be producing and no new requests for LMU approval will be filed; 3) all pending arm's-length assignments will be approved and no new arm's-length assignments will be filed; and 4) all pending relinquishments will be approved and no new relinquishments will be filed. Therefore, there are only 18 additional lessees that could become disqualified due to expiration of the 10-year period for existing, approved arm's-length assignments by November 1, 1992.

List of Entities NOT in Compliance with Section 2(a)(2)(A)
of the Mineral Leasing Act of 1920, as Amended and Supplemented
Ultimate Parent, if Known, Shown in Parentheses
Corporate Affiliates, if Known, Listed as Bullets (°)

November 4, 1987

1. Blackhawk Coal Company (American Electric Power Company Inc.)
2. Bugni, Adolph, Robert and Thomas
3. Conotton Land Company (Conotton Land Company)
   - ° Cravat Coal Company
4. CPS Mining Company, Inc. (CPS Mining Company, Inc.)
5. Divide Coal Mining Company
6. Empire Energy Corporation * (Cyprus Western Minerals Inc.)
   - ° Empire Gas Corporation
7. Evans Coal Company (Dahlgren, Roger)
   - ° K & R Coal Company
   - ° Bokoshe Coal Company
   - ° Delta Contracting, Inc.
8. Franklin Real Estate Company (American Electric Power Company, Inc.)
9. Fulton, Caesar and Charles A. Denton
10. General Exploration Company *
11. Helen Mining Company (Quaker State Oil Refining Company *)
    - ° Kanawha Hocking Coal and Coke Company
    - ° Valley Camp Coal Company
12. Johnson, Glenn
13. Kaiser Coal Corporation (Kaiser Steel Corporation)
14. Kanawha Hocking Coal and Coke Company (Quaker State Oil Refining Company *)
    - ° Helen Mining Company
    - ° Valley Camp Coal Company

* Current/Former Federal Oil and Gas Lessee

15. Peter Kiewit Sons Inc. (Peter Kiewit Sons Inc.)
    - * Big Horn Coal Company
    - * Black Butte Coal Company
    - * Decker Coal Company
    - * Kiewit Construction Company
    - * Kiewit Eastern Company
    - * Kiewit Industrial Company
    - * Kiewit Mining and Engineering Company
    - * Kiewit Mining Group
    - * Kiewit Pacific Company
    - * Kiewit Western Company
    - * Peter Kiewit Sons Company Ltd.
    - * Rosebud Coal Sales Company
16. King Cannel Coal Company (King Cannel Coal Company)
17. Kingston, Charles W. and J. O.
18. Knife River Coal Mining Company (Montana/Dakota Utilities Resources Group, Inc.)
    - * Fidelity Gas Company
19. Lone Star Steel Company (Lone Star Technologies, Inc.)
20. Martinez, Albert
21. Mid-Continent Resources Inc. (Mid-Continent Resources Inc.)
22. Midwest Mining Company (Gaither, Kenneth R.)
23. Mining Systems Corporation (Standard Equipment, Inc.)
24. Nevada Electric Investment Inc. (Nevada Power Company)
25. Padilla, Gilberto
26. Pitkin Iron Corporation (Pitkin Iron Corporation)
27. Rasmussen, Aaron H. and Veola H.
28. Reese Estate (Reese Estate)
29. Riebold, Peter and Robert Chapman
30. Ruby Construction Company (Ruby Construction Company)
31. Sunland Mining Corporation (Pyro Energy Corporation--85%)

* Current/Former Federal Oil and Gas Lessee

32. Thompson Creek Coal and Coke (Thompson Creek Coal and Coke)
33. Utah International Inc. [B.H.P. Utah Minerals International] (Broken Hill Proprietary of Australia Inc.)
    - B.H.P. Petroleum (Americas) Inc. *
34. West, S. H.
35. Western Slope Carbon Inc. (Blue Horizon Mining Company Inc.)
    - Northwest Coal Corporation
36. Whittington, H. M. and R. D. Bass Trust Estate
    - Mosle, Jon Jr.
    - Randall, Risher

* Current/Former Federal Oil and Gas Lessee

Alphabetized List of Entities NOT in Compliance with Section 2(a)(2)(A)
of the Mineral Leasing Act of 1920, as Amended and Supplemented
Cross-References to the Corresponding Number for the
Federal Coal Lessees are Contained in Parentheses after the Entity's Names

November 4, 1987

American Electric Power Company, Inc. (1, 8)
Bass, R. D. Trust Estate (36)
B.H.P. Petroleum (Americas) Inc. (33)
B.H.P. Utah Minerals International (33)
Big Horn Coal Company (15)
Black Butte Coal Company (15)
Blackhawk Coal Company (1)
Blue Horizon Mining Company Inc. (35)
Bokoshe Coal Company (7)
Broken Hill Proprietary of Australia, Inc. (33)
Bugni, Adolph (2)
Bugni, Robert (2)
Bugni, Thomas (2)
Chapman, Robert (29)
Conotton Land Company (3)
CPS Mining Company Inc. (4)
Cravat Coal Company (3)
Cyprus Western Minerals Inc. (6)
Dahlgren, Roger (7)
Decker Coal Company (15)
Delta Contracting, Inc. (7)
Denton, Charles A. (9)
Divide Coal Mining Company (5)
Empire Energy Corporation (6)
Empire Gas Corporation (6)
Evans Coal Company (7)
Fidelity Gas Company (18)
Franklin Real Estate Company (8)
Fulton, Caesar (9)
Gaither, Kenneth R. (22)
General Exploration Company (10)
Helen Mining Company (11)
Johnson, Glenn (12)
K & R Coal Company (7)
Kaiser Coal Corporation (13)
Kaiser Steel Corporation (13)
Kanawha Hocking Coal & Coke Company (11, 14)
Kiewit Construction Company (15)
Kiewit Eastern Company (15)
Kiewit Industrial Company (15)
Kiewit Mining and Engineering Company (15)
Kiewit Mining Group (15)
Kiewit Pacific Company (15)
Kiewit Western Company (15)

King Cannel Coal Company (16)
Kingston, Charles W. (17)
Kingston, J. O. (17)
Knife River Coal Mining Company (18)
Lone Star Steel Company (19)
Lone Star Technologies, Inc. (19)
Martinez, Albert (20)
Mid-Continent Resources Inc. (21)
Midwest Mining Company (22)
Mining Systems Corporation (23)
Montana/Dakota Utilities Resources Group, Inc. (18)
Mosle, Jon Jr. (36)
Nevada Electric Investment Company (24)
Nevada Power Company (24)
Northwest Coal Corporation (35)
Padilla, Gilberto (25)
Peter Kiewit Sons Company Ltd. (15)
Pitkin Iron Corporation (26)
Pyro Energy Corporation (31)
Quaker State Oil Refining Company (11, 14)
Randall, Risher (36)
Rasmussen, Aaron H. (27)
Rasmussen, Veola H. (27)
Reese Estate (28)
Riebold, Peter (29)
Rosebud Coal Sales Company (15)
Ruby Construction Company (30)
Standard Equipment Inc. (23)
Sunland Mining Corporation (31)
Thompson Creek Coal and Coke (32)
Utah International Inc. [B.H.P. Utah Minerals International] (33)
Valley Camp Coal Company (11, 14)
West, S. H. (34)
Western Slope Carbon Inc. (35)
Whittington, H. M. (36)

[redacted] Bureau of Land Management [redacted] 11:04:07 [redacted] 5101 AM [redacted] Page 3

POTENTIAL SECTION [illegible] DE M&A 1/SECTION 3 DE ETAAI NONCOMPLIANCE FEDERAL COAL LEASES AS OF APRIL 1, 1987

NOTE: [illegible] EXISTING COAL LEASES WITH PENDING LMU APPLICATIONS, RELINQUISHMENTS, AND ARM'S LENGTH ASSIGNMENT

OKLAHOMA

[illegible] OK 051/4

OREGON

[illegible] COAL CO INC [illegible]
EDEN RIDGE COAL CO [illegible]
[illegible]

SOUTH DAKOTA

[illegible]
[illegible]

UTAH

[illegible] COAL CO [illegible]
[illegible]
[illegible]
[illegible]
[illegible]
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[illegible]
[illegible]

[illegible] [illegible] [illegible]

POTENTIAL SECTION 2(a)(2)(A) OF MLA (SECTION 3 OF FCLAA) NONCONFORMANCE FEDERAL COAL LEASES AS OF NOVEMBER 4, 1987

NOTE: INCLUDES [illegible] COAL LEASES WITH PENDING LEASE APPLICATIONS, RELINQUISHMENTS, AND AREA S [illegible] A [illegible]

WYOMING

[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]

[redacted] Bureau of Land Management [redacted]

POTENTIAL SECTION 7(a)(1)(A) OF MLA (SECTION 3 OF PL1441) NONCONFORMANCE FEDERAL COAL LEASES AS OF NOVEMBER 4, 1987

1) WIDCO
2) WYODAK RESOURCE DEVELOP CORP

PACIFIC POWER & LIGHT CO

POTENTIAL SECTION 7(a)(1)(A) NON-COMPLIANCE (FINAL COAL LEASES AS OF NOVEMBER 4, 1976)

SORTED BY STATE, COMPANY, LEASE NUMBER

NOTE: DOES NOT INCLUDE FINAL COAL LEASES WITH PENDING MLA APPLICATION, PRELIMINARY, OR NON-COAL ASSIGNMENTS

CALIFORNIA			
	[illegible] ESTATE	----	[illegible]
COLORADO			
	[illegible] ENERGY CORP	----	[illegible]
	FRANKLIN REAL ESTATE CO	----	C013093
	[illegible]	----	[illegible]
	[illegible] CONTINENT RESOURCES INC	----	[illegible] C011646 C0125456 C0125457 C030145 C074652 C09005 [illegible]
	KEITH IRON CORP	----	C037277 C059420 D040389
	KIENBOLT & CHAPMAN K	----	C028875
	KUBY CONSTRUCTION CO	----	D051698
	OHLAND MINING CORP	----	C0127592 D046544
	THOMPSON CREEK COAL & COKE	----	D03[illegible]
	UTAH INTL INC (DBF UTAH MINE)	----	C012476
	WESTERN SLOPE CARBON INC	----	F1130 D047921 D056724
MONTANA			
	[illegible] ADOLPH D	BIGHT FOREST	[illegible]
	DIVIDE COAL MINING CO	----	M052647
	[illegible]DERSON GLENN	----	[illegible]
NEW MEXICO			
	PADILLA GILBERTO	----	SF075321 SF077279
NORTH DAKOTA			
	KNIFE RIVER COAL MINING CO	----	M437ND

...OSPECTIVE SECTION 2(b)(2)(A) OF MLA ELECTION LIS (FEDERAL NONCONFIDENTIAL) FEDERAL COAL LEASES AS OF SEPTEMBER 1, 19...

NOTE: DOES NOT INCLUDE FEDERAL COAL LEASES WITH PENDING LMU APPLICATIONS, RELINQUISHMENTS, AND ALA LEASE APPLICATIONS.

NORTH DAKOTA

...AGIC CIVIL COAL MINING CO	.....	NDM-...
OKLAHOMA		
...MO COAL CO	.....	OKM-...
		OKM-...
		OKM-...
		OKM-...
		OKM-...
		OKM-...
		OKM-...
...ORE-TEX CREEK CO	.....	OKM-...
		OKM-...
		OKM-...
		OKM-...
		OKM-...
		OKM-...
		OKM-...
MIDWEST MINING CO	.....	OKM-...
MINING ...SERVICES INC	.....	OKM-...
OREGON		
...TT MINING CO INC	.....	OR-...
PENNSYLVANIA		
...RCO MINING CO		ES13845
		ES7801
UTAH		
...DERSON COAL CO		SL-...
		SL-...
		U-...
		U-...
		U-...
		U-...
...LTON CREEK	DENTON CHARLES A	SL-...
...NERAL EXPLORATION CO	.....	SL-...
...AULT COAL CORPORATION	.....	SL-...
		SL-...
		SL-...
		SL-...
		SL-...
		U-...
		U-...
		U-...
		U-...

POTENTIAL SECTION 2(a)(2)(A) OF MLA (SECTION 3 OF P(LAA) NONCOMPLIANCE FEDERAL COAL LEASES AS OF NOVEMBER 4, 1987

NOTE: DOES NOT INCLUDE FEDERAL COAL LEASES WITH PENDING LBA APPLICATIONS, RELINQUISHMENTS, AND ARM'S LENGTH ASSIGNMENTS

UTAH

[illegible]	----	U014218 U02785 U0[illegible]
[illegible]	----	U[illegible] U0[illegible]41 U067900
[illegible]	----	U[illegible]
[illegible]	[illegible]	U057919
[illegible]	----	SL058575 SL064507 U[illegible] U060745 U060746 U065017 U0[illegible] U0[illegible] U46444
[illegible]	[illegible]	U[illegible]
UTAH INTERNATIONAL UTAH MINE	----	U0105404 U0135930 U0122579 U0122582 U0122583 U0122584 U0122623 U0122647 U0122649 U0122650 U0122651 U0122652 U0122676.5 U0124768 U0126916 U0[illegible] U0[illegible] U0149702 U0[illegible]4 U0[illegible]5
[illegible]	----	U0123181

WYOMING

[illegible]	----	W023[illegible]
[illegible]	----	W060241
[illegible]	[illegible]	W961

POTENTIAL ACTION - DISPOSAL OF MEA INFECTION FOR FILMA[illegible] FORTH USA LEASE A TO BUYBORE IN 198

[illegible] FLAGGED [illegible] OF 4,106 RECORDS, ON 12/01/88

72 BLACKHAWK COAL CO
73 BRONCO ANTHRACITE [illegible]
74 CONSOLTON LAND CO
75 CRC MINING OF ONE
76 CUMBERLAND MINING CO
77 EAGLE ENERGY INC
78 EDAC COAL CO
79 FRANKLIN COAL SALES CO
80 FULTON COAL CO [illegible]
81 GENERAL EXPLORATION CO
82 GEO MINING CO
83 JOHNSTON GLENN
84 LAKELOCAL CORPORATION
85 LANGSHA HOLDING COAL A [illegible]
86 LEACH MINING CORP
87 LEN CAMBEL COAL CO
88 LINGSTON CHARLES W [illegible]
89 LITTLE RIVER COAL MINING CO
90 LONE STAR COAL CO
91 MALLORY ALBERT
92 MID-CONTINENT RESOURCES INC
93 MIDWEST MINING CO
94 MINING SERVICE CORP
95 NEVADA [illegible]
96 [illegible]
97 [illegible]
98 [illegible]
99 [illegible]
100 [illegible]
101 [illegible]
102 [illegible]
103 [illegible]
104 [illegible]
105 [illegible]
106 [illegible]
107 [illegible]
108 [illegible]
109 [illegible]
110 [illegible]

Question 6: How many coal royalty reduction applications have been granted under section 39 of the Mineral Leasing Act in the last five years?

As shown in the attached table of royalty rate reductions granted, denied or pending for coal leases, only three applications have been approved during the 5 year period ending November 1987. However, 13 have been approved and 7 denied since 1980.

- Of these, how many have been granted under the new guidelines?

  None have been granted under the new guidelines.

- What royalty rate is applicable on the applications that have been granted?

  Since no coal royalty reduction applications have been granted under the new guidelines, there is no further response.

ROYALTY RATE REDUCTIONS GRANTED, DENIED OR PENDING ON FEDERAL COAL LEASES

State & Lessee	Lease No.	Date Lease Issued	Date Rate Reduction Request Filed	Original Royalty Rate	Reduced Royalty Rate Requested	Length of Royalty Reduction Requestd	Date Rate Reduction Request Approved	Date Rate Reduction Denied
Alabama								
Stovall Files	ES16968	06/01/80	07/02/80	12.5% (gv)	7.5% (gv)	3 years	11/07/80	
Nickel Plate Mining Co.	ES35042	01/01/86	01/15/86	12.5% (gv)	6.0% or 7.0% (gv)	Not Specified	Pending	
Colorado								
Wyoming Fuel Co.	C27931	03/01/80	10/06/80	12.5% (gv)	5.0% (gv)	2 years	12/01/81	
Colorado Yampa Coal Co.	C20900	11/01/78	01/15/81	16.0% (gv)	12.5% (gv)	18 months	06/13/81	
Cyprus Western Coal Co. 1/	C20900	11/01/78	10/15/84	16.0% (gv)	10.0% (gv)	36 months	Pending	
Colorado Yampa Coal Co.	C22644	07/01/79	01/15/81	18.3% (gv)	12.5% (gv)	18 months	07/22/81	
Cyprus Western Coal Co. 1/	C22644	07/01/79	10/15/84	18.3% (gv)	10.0% (gv)	36 months	Pending	
National King Coal	P058300	09/11/41	08/23/81	12.5% (gv)	5.0% (gv)	3 years		12/06/83
Kerr Coal Co.	C22777	07/01/80	12/07/81	12.5% (gv)	5.0% (gv)	3 years		02/01/82
Colowyo Coal Co.	C35874	06/11/82	04/12/82	12.5% (gv)	5.0% (gv)	36 months	07/16/82	
	This royalty reduction was extended for another 9 months from 7/1/85.							
National King Coal	C29125	11/01/81	08/19/82	12.5% (gv)	5.0% (gv)	3 years		12/06/83

(gv) gross value

1/ This lease was assigned by Getty Minerals Marketing, Inc. to Cyprus Western Coal Co. in October 1985.

ROYALTY RATE REDUCTIONS GRANTED, DENIED OR PENDING ON FEDERAL COAL LEASES

State & Lessee	Lease No.	Date Lease Issued	Date Rate Reduction Request Filed	Original Royalty Rate	Reduced Royalty Rate Requested	Length of Royalty Reduction Requestd	Date Rate Reduction Request Approved	Date Rate Reduction Denied
Colorado (cont'd.) Peabody Coal Co.	C19885	06/01/79	12/21/82	17.08% (gv)	5.0% (gv)	3 years		12/06/83
Western Slope Carbon	D056724 2/	12/01/50	10/26/79	.15/ton	5.0% (gv)	3 years	07/30/82	
	D042921 2/	02/25/31	10/26/79	.15/ton	5.0% (gv)	3 years	07/30/82	
	C27103 2/	10/01/79	11/01/79	8.0% (gv)	5.0% (gv)	36 months	06/01/82	
Utah International	C07518	06/01/58	04/10/80	12.5% (gv)	.15/ton	7 years		08/01/80
	C07519	06/01/58	04/10/80	12.5% (gv)	.15/ton	7 years		08/01/80
Montana Western Energy Co.	M35734 3/	08/01/79	03/29/82	21.0% (gv)	12.5% (gv)	24 months	03/01/83	
	M35734	08/01/79	10/14/86	21.0% (gv)	.356/ton	Covers remaining coal on lease	Pending	
Western Energy Co.	M35735 4/	08/01/79	03/25/80	21.0% (gv)	12.5% (gv)	24 months	04/09/81	
Western Energy Co.	M35735 3/	08/01/79	03/29/82	21.0% (gv)	12.5% (gv)	24 months	03/01/83	
	M35735	08/01/79	05/16/83	21.0% (gv)	12.5% (gv)	Until mined out	06/20/85	

(gv) gross value

2/ These royalty reductions were approved retroactive from 11/01/79 to 10/31/82.

3/ Royalty reduction was approved retroactive 01/01/82 to 01/01/84.

4/ Royalty reduction was approved retroactive for 01/01/80 to 01/01/82.

ROYALTY RATE REDUCTIONS GRANTED, DENIED OR PENDING ON FEDERAL COAL LEASES

State & Lessee	Lease No.	Date Lease Issued	Date Rate Reduction Request Filed	Orignial Royalty Rate	Reduced Royalty Rate Requested	Length of Royalty Reduction Requestd	Date Rate Reduction Request Approved	Date Rate Reduction Denied
Montana (cont'd.)								
Knife River Coal Mining Co.	M023207	03/01/57	11/26/82	12.5% (gv)	5.0% (gv)	36 months	Pending	
North Dakota								
Basin Coop Services	M070203ND	11/01/65	09/25/86	12.5% (gv)	.60/ton	Not Specified	Pending	
	M21209ND	11/01/79	09/25/86	12.5% (gv)	.60/ton	Not Specified	Pending	
Falkirk Mining Co.	M31053ND	08/01/80	09/29/86	12.5% (gv)	9.0% (gv)	48 months	Pending	
Oklahoma								
Hardy Hall 5/	BLMC031135	05/01/56	01/17/79	12.5% (gv)	5.0% (gv)	24 months	10/01/80	
K & R Coal Co.	BLMC031135	05/01/56	09/17/82	12.5% (gv)	5.0% (gv)	36 months	Pending	
Great National Corp.	NM24005	12/01/79	05/07/82	12.5% (gv)	5.0% (gv)	Not Specified		
	A relinquishment has been filed on this lease.							
HFC Corp.	0410	09/01/83	08/15/84	12.5% (gv)	No specific rate	For each year in operation	Pending	
Farrell Cooper Mining Co.	NM50936	02/01/83	09/13/84	12.5% (gv)	5.0% (gv)	10 years	Pending	
Cari Intl. Mining	NM141015	07/01/62	06/27/85	12.5% (gv)	No specific rate	Not specified	Pending	

(gv) gross value

5/ Royalty reduction was approved from 01/01/81 to 01/01/83.

ROYALTY RATE REDUCTIONS GRANTED, DENIED OR PENDING ON FEDERAL COAL LEASES

State & Lessee	Lease No.	Date Lease Issued	Date Rate Reduction Request Filed	Original Royalty Rate	Reduced Royalty Rate Requested	Length of Royalty Reduction Requestd	Date Rate Reduction Request Approved	Date Rate Reduction Denied
Utah								
Coastal States Energy Co.	U28297	01/01/79	08/28/80	11.68% (gv)	5.0% (gv)	Not Specified		08/10/82
Valley Camp	U020305	03/01/62	05/17/83	8.0% (gv)	5.0% (gv)	Not Specified	Pending	
Blackhawk Coal Co.	U058184	06/21/21	06/04/84	8.0% (gv)	2.5% (gv)	Not Specified	Pending	
	S1029093	06/17/21	06/04/84	8.0% (gv)	2.5% (gv)	Not Specified	Pending	
Wyoming								
Cravet Coal Co.	E.011804	03/28/38	03/23/81	8.0% (gv)	5.0% (gv)	Not Specified		Withdrew 05/01/81
Ark Land Co.	W054727	11/01/61	01/01/86	12.5% (gv)	.60/ton	36 months	Pending	
	W054737	11/01/61	01/01/86	12.5% (gv)	.60/ton	36 months	Pending	
	W0146199	01/01/64	01/01/86	12.5% (gv)	.60/ton	36 months	Pending	
	C033800	10/08/24	01/01/86	12.5% (gv)	.60/ton	36 months	Pending	

(gv) gross value

Question 7: Is paragraph 7(a)(2) of the Department's proposed bill intended to allow readjustment to a rate other than 12.5 percent for surface mined coal even though paragraph (7)(a)(1) requires payment of a royalty of not less than 12.5 percent of the value of the coal?

o Please explain the provision.

Response: In paragraph 7(a)(2), the phrase ". . . unless the Secretary has timely readjusted the lease to a different rate in accordance with this section" recognizes the Secretary is authorized under paragraph 7(a)(1) to apply a royalty rate of less than 12.5 percent where the coal will be recovered by underground mining operations or greater than 12.5 percent for coal recovered by other mining operations.

Paragraph 7(a)(2) provides no additional authority to the Secretary to establish royalty rates beyond that in paragraph 7(a)(1). It merely ensures that if the Secretary does not timely readjust a lease, the royalty will be automatically readjusted by operation of law to 12.5 percent.

Question 8: The Administration bill appears to eliminate the concept of continued operation.

- o Is this intended?
- o If so, why?

Response: The Administration bill does not use the term "continued operation." The provisions of section 7(b)(1) contains a requirement to make "an annual payment of an advance royalty equivalent to the royalty which would be assessed on assumed annual production of 0.3 percentum of total recoverable reserves regardless of whether coal is produced, until . . . all recoverable reserves in such lease have been mined out." This provision requires a continuing commitment to pay advance royalty which can only be recouped upon subsequent production. Section 7(b)(2) of the Administration bill sets this subsequent recoupment provision. So, while the term "continued operation" is not used in the Administration bill, the bill does contain analogous requirements.

Question 9: What lease terms and conditions do you expect would be modified under section 301(a) of the Administration proposed bill?

Response: Leases issued or readjusted since enactment of FCLAA (August 4, 1976) contain many of the provisions of FCLAA as specific terms and conditions, e.g. advance royalty and diligence. Section 301(a) allows these lessees to obtain the benefit of the statutory changes which our experience under FCLAA indicates are needed for a fair and effective coal management program. The provisions of Section 301(a) would allow for standardization of the diligence provisions for all leases issued or readjusted after August 4, 1976.

Question 10: I note that the Administration's proposed bill does not contain a provision relating to special bituminous mines. Why not?

Response: The Administration bill does not contain any provision regarding "special bituminous mines" because there are currently available statutory and regulatory provisions as authorized by Section 39 of MLA and implemented in the BLM guidelines.

Question 11: How many mines would qualify as "special bituminous mines"? Is there a need for a lower royalty rate for these mines?

Response: We estimate that there are only two mines that may fall within the SMCRA category of "special bituminous mines".

We have not examined the issue of the need for a lower royalty rate for these mines.

Question 12: The Department's draft bill simply eliminates the need for leases in a LMU to be contiguous. Are any parameters for inclusion in an LMU contemplated by the Department?

- o Don't you think that lands should be within reasonable proximity of each other?

Response: The Administration bill proposes to simply eliminate the phrase "and be contiguous" from the existing statutory provisions relating to logical mining unit (LMU) formation. The retained criteria which state that all the lands in an LMU "must be under the effective control of a single operator [and] be able to be developed and operated as a single operation" are sufficiently well defined to prevent abuses as to the lateral extent of an LMU application. Including a term such as "reasonable proximity" in the statute will cause regulatory difficulties.

Question 13: Are there currently any lessees that are subject to the Section 2(a)(2)(A) prohibition due only to holding mined-out leases solely for reclamation purposes? How many lessees do you expect will become subject to this prohibition for this reason in the next 5 years?

Response: Lessees are not prohibited from being issued any MLA lease if the lessees hold only Federal coal leases from which the recoverable coal reserves have been mined out and which are being held solely for such purposes as reclamation. On December 5, 1986, BLM published a final rulemaking fully implementing the provisions of Section 2(a)(2)(A) of MLA (51 FR 43910). Final 43 CFR §3472.1-2(e)(5) states, in its entirety: "Leases that have been mined out (i.e., all recoverable coal reserves have been exhausted), as determined by the authorized officer, may be held for such purposes as reclamation without disqualification of the entity under the provisions of this subpart." Since a lessee holding only Federal coal leases from which all recoverable coal reserves have been mined out is not prohibited from being issued any MLA leases, no lessees will be subject to the Section 2(a)(2)(A) of MLA prohibition for this specific class of Federal coal leases in the next 5 years.

Question 14: The proposed Administration bill does not include a provision excepting lessees who hold leases solely for purposes of reclamation from the requirements of Section 2(a)(2)(A) and 7. Am I correct? S. 1120 has this provision. Do you support it?

Response: The proposed Administration bill does include a provision excepting lessees who hold Federal coal leases solely for such purposes as reclamation from the requirements of Section 2(a)(2)(A) and 7. Section 101 of the Administration bill provides at Sec. 7(b)(1), in part: "Such payment must be made each year after the 15th year, regardless of whether coal is produced, until the Secretary determines that all recoverable coal reserves in such lease have been mined out . . . ." (Emphasis added.) Since the Administration bill would not amend existing Section 2(a)(2)(A) of MLA, Section 2(a)(2)(A) would still require that Federal coal leases be producing in commercial quantities, except as provided in 7(b) of MLA. Under the Administration bill, such production can be satisfied by producing or by paying advance royalty in lieu of production, until the recoverable coal reserves have been mined out. If all recoverable coal reserves would be mined out, the Administration bill would not require either production or payment in lieu of production. Existing Section 2(a)(2)(A) would allow Section 7(b) of MLA to satisfy the Section 2(a)(2)(A) producing in commercial quantities requirement. Therefore, regardless of when a Federal coal lease is issued, after it has been mined out, it has neither a production obligation nor a payment in lieu of production obligation. We support the concept of not requiring production from mined-out leases as well as not prohibiting MLA lease issuance to any entity that holds such leases.

Questions from Senator McClure

Question 1 Why does the Department want to amend the Mineral Leasing Act of 1920?

Answer: When FCLAA was passed, there was virtually no experience with its provisions as they applied to coal production. As a highly complex piece of legislation with new requirements for virtually all phases of production, there has been a good deal of trial and error with these provisions. Now there is evidence at hand demonstrating what these provisions mean with regard to the wise use of the Nation's Federal coal resources. These provisions must also be viewed in light of several other new or evolving provisions in this same time period, virtually all impacting the timing and conduct of coal mining. As in so many industrial ventures today, project development takes longer than it did 12 years ago, cost are higher, and the entire process is more complex and fraught with greater risks. Coal sales contracting has also changed dramatically, and this has conditioned lessees' approach to the development of long-term commitments. Clearly, diligence is still a relevant issue, but the yardsticks by which we now measure diligence must be changed to reflect current practices by those who establish the benchmarks for success in this industry.

Question 2 On what basis does the Department determine that the production requirement should be lowered from 1 percent to 0.3 percent of recoverable reserves?

Answer: This is based on a detailed study previously submitted to the Committee. This examined a variety of mining and financial scenarios in different regions. 0.3 percent was the rate most often found to provide an incentive for diligent development without being unduly punitive when market conditions force delay of development. A copy of the study is attached.*

*Subcommittee Note.--The study has been retained in subcommittee files.

Question 3 Why does the Department's proposal extend the diligent development period from 10 to 15 years without requiring advance royalty payment?

Answer: We have found that new stand-alone operations may take in excess of 10 years to meet the various permitting and licensing requirements, equipment purchasing, and initial development prior to the commencement of actual production. This extension to 15 years would allow lessees to meet these needs without penalty. Some of these requirements were not in existence at the time of the passage of FCLAA.

Question 4 Why does the Department's proposal expand the lease modification provision from 160 to 320 acres?

Answer: This expansion is necessary to prevent the bypass of unleased Federal coal. 160 acres may not be sufficient at a particular mine to prevent bypass of all unleased Federal coal. This expansion of the acreage for lease modification was recommended in the Inspector General Draft Report, C-LM-BLM-07-87, "Federal Coal Management Bureau of Land Management."

Question 5 What changes does the Department's proposal make with respect to LMU's?

Answer: The Department's proposal coincides with the provisions of S. 1120 with respect to LMU's. They both delete the 40-year mine-out requirement, amend the 25,000 acreage limitation to include only Federal lands, and while worded somewhat differently, they both redefine the contiguity requirement.

Question 6 Assuming legislation was approved by the Congress which amended Section 7 of the Mineral Leasing Act in a manner acceptable to the Department and which also repealed Section 2(c) of the Act, would the Department support that legislation?

Answer: We favor repeal of section 2(c) and recommend that it be replaced with a provision for cooperative leasing for checkerboard areas. If such a provision were in a bill that also amended section 7 in a manner acceptable to the Department, the Department would recommend that the Administration support it.

APPENDIX II

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

National Rural Electric Cooperative Association

1800 Massachusetts Avenue, N.W.
Washington, D.C. 20036
Telephone: 202/857-9500

Statement
of
Bob Bergland
Executive Vice President
National Rural Electric Cooperative Association

before the

Senate Energy and Natural Resources Committee

Subcommittee on Mineral Resources Development
and Production

on

"FEDERAL COAL LEASING AND UTILIZATION ACT OF 1987"

S. 1120

Tuesday, November 17, 1987

(193)

It is our pleasure to have the opportunity to submit for the record our comments on S. 1120, the "Federal Coal Leasing and Utilization Act of 1987." The NRECA member systems serve more than 25 million electric consumers in 46 states. The leadership of this important segment of the utility industry appreciates the ongoing interest this Subcommittee has taken in the problems of the nations 1000 consumer-owned electric cooperatives.

In 1986, the Rural Electric Administration reported that 73.2 percent of the total coal-fired power production costs came from the price of the fuel consumed by the generation plant. This fuel cost percentage does not include the additional costs of debt service and taxes.

We are supportive of many of the provisions of S.1120. However, we are very concerned about Section 104 of the bill which amends Section 7 of the Mineral Lands Leasing Act as amended. The section as now drafted, we believe, would bring additional economic hardship on many western and middle western coal producers and utilities. To impose a 12-1/2 percent royalty, instead of a cost in the range of 17 cents per ton as was set for coal mined from federal land prior to 1976, will translate to at least a 6 to 7 percent increase in electricity to millions of consumers served by utilities with substantial dependence on coal-fired bulk power.

We also believe that the 12-1/2 percent royalty mandated in the bill for surface coal will make numerous marginal coal reserves uneconomic to mine and consequently force premature mine and power plant shut downs. In Colorado alone, the number of operating mines has gone from 51 in 1981 to 19 in 1986. There have been 2,800 jobs lost as a result of these 23 mine closings dropping from 4,600 persons employed in 1981 to 1,800 in 1986. For rural areas, particularly in the Rocky Mountain West, where nearly all of the coal reserves are federally owned, such statistics take their toll in the state and local economy. National statistics indicate that most western states are continuing to suffer economic hardship and high unemployment with acute problems in rural coal producing areas.

We respectfully recommend, therefore, that this bill be amended in the following areas:

1. Amend Section 104 of the bill to create an exception to the 12 1/2 percent royalty for federal coal leases issued prior to August 4, 1976, the coal from which has a sulfur content of less than 1.0 percent and is used to supply electric generating plants using modern pollution control equipment such as sulfur dioxide removal systems, or other technology to reduce sulfur dioxide emissions. We are not asking that the exception completely roll back the royalty rates to the pre-1976 level, but that the levels be set tied to the inflation rate as measured by the Producer Price Index (All Commodities) that is published by the U.S. Department of Labor, Bureau of Labor Statistics or that the percentage increase permitted in law over the pre-1976 rate be capped.

Further, we urge that Section 104 be modified to permit the Secretary authority to adjust surface coal royalty rates in circumstances where production costs are substantially higher due to geologic conditions of the reserve, mining conditions, thick over burden and various other factors all of which can severely affect mining cost. The use of this authority would be appropriate, we feel, in cases where a mine would be forced to close because the royalty rate clearly made their coal uncompetitive or where the royalty rate would result in large and unfair price increases for electric consumers.

2. We support the concept of "diligent development" as an important federal management concept. However, we feel that the requirement in the bill to force substantial cash payments at the end of 10 years should be modified in situations where circumstances beyond the control of the lease holder prevent commencing production by the end of the 10 year period. It would be helpful if the Secretary would be given the authority in the bill to mitigate the impact of this provision should individual situations merit. For example, delays can be forced upon lease holders due to prolonged recession in the coal industry or the electric industry that are completely outside the control of the lease holder. Such delays are particularly difficult for small business firms with limited financial resources and/or consumer-owned cooperatives such as those that NRECA represents.

3. We support the concept of "continued operations" as well as a federal management tool. Again, we would ask that the provision be modified to permit flexibility in hardship cases. We have particular concerns where a mine is totally dependent on a single power plant customer. Should something undermine the viability of the customer such as a fire explosion or serious demand interruption requiring a shut-down of a utility plant for a period, the lease holder should be able to appeal to the Secretary for recourse.

There are several provisions that we wholeheartedly support:

1. We support Section 103 of the bill that modifies the current law regarding the definition of "logical mining unit" by loosening the strictures governing contiguous areas.

2. We support the expansion of the total acreage requirement to 25,000 acres of federal land instead of the more restrictive current law.

Summary

We appreciate the opportunity to submit this testimony for the record and hope that our comments are useful to you in this important legislative endeavor.

STATEMENT

OF

FREDRICK D. PALMER
GENERAL MANAGER
WESTERN FUELS ASSOCIATION, INC.

SUBMITTED TO

SUBCOMMITTEE ON MINERAL RESOURCES DEVELOPMENT AND PRODUCTION
COMMITTEE ON ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE

FOR THE HEARING

ON

S.1120, A BILL TO AMEND THE MINERAL LEASING ACT
OF 1920 TO IMPROVE THE ADMINISTRATION OF THE
FEDERAL COAL LEASING PROGRAM, AND FOR OTHER PURPOSES

November 17, 1987

Mr. Chairman, My name is Fredrick D. Palmer and I am general manager of Western Fuels Association, Inc. I appreciate the opportunity of getting our views on federal coal leasing and S.1120 before the Subcommittee. Our organization supplies coal at cost to our consumer-owned electric utility members -- rural electric generation and transmission cooperatives and municipal electricity suppliers. We own two mines, one producing coal from federal leases in Colorado and one from non-government coal reserves in southern Illinois. We also buy coal that is produced in Wyoming, Montana and New Mexico, much of it coming from federal leases.

Western Fuels was organized as a not-for-profit Wyoming corporation in 1974 as a consequence of the energy crisis growing out of the 1973-4 embargo on oil shipments to this country from the Middle East producers belonging to the Organization of Petroleum Exporting Countries (OPEC). We have followed the nation's coal leasing policies intently for the entire period of our existence, and longer, because work was underway for several years leading to construction of the first power plant we were to supply coal to before Western Fuels was organized. That first power plant is the Laramie River Station near Gillette, Wyoming, constructed by a consortium of consumer-owned utilities organized as the Missouri Basin Power Project (MBPP).

I want to commend you, Mr. Chairman, and your Subcommittee for undertaking this re-examination of coal leasing policies and problems, existing and potential. There is great need for a firm

and stable federal coal leasing policy -- one that producers and users alike can rely on through the unpredictable ups and downs of market conditions and the fluctuations of energy demands. If debate and deliberations on your bill, S.1120, will lead to such a policy, I am sure your initiative will have made a major contribution to that desired result.

The situation today is far different from 1971 when the Secretary of the Interior placed a moratorium on any new leasing of federal coal. The intention was to give the government time to develop a competitive leasing system with safeguards that would prevent speculators from enriching themselves at the expense of the citizens of this country who own this valuable energy resource and of the consumers of electricity generated from burning that coal.

The moratorium on leasing, plus delays in renewing a leasing program caused in part by environmentalist lawsuits aimed both at slowing implementation of a new leasing program and of starting new mines on existing leases, led to a shortage of available coal at a time demand was increasing. The obvious result was higher prices for coal.

Today, a condition of over-capacity exists throughout most of the federal coal areas, with many new mines operating at something less than full capacity, and with prices far below those demanded 10 years ago. There are few applications for new leases these days except in special cases. Our Colorado mine is in the Green River/Hams Fork Federal Coal Production Region, and the federal-state Regional Coal Team with responsibilities for that

southwestern Wyoming - northwestern Colorado region, has recommended decertification of the region in view of the relatively weak interest in future competitive lease auctions. Western Fuels supports that decision. There have been news accounts that the Interior Department's Bureau of Land Management may make this a general policy until the current slow demand for electricity and coal makes a turn-around.

But, while we applaud the Department and its coal leasing bureau for reacting realistically to current conditions, we want to state firmly that there is still need to develop and adopt a simple and fair federal leasing program that protects the interest of the government and of the producers and users of federal coal. There should not be long periods in which only emergency leases can be obtained. There should not be governmental action or inaction that in a period of high demand encourages owners of existing mines to overcharge for this resource.

Coal leasing rules were brought up to date by the Federal Coal Leasing Amendments Act of 1976, although implementation of that act through the Federal Coal Management Program was far too slow and the program itself was too cumbersome. Government was trying to make almost all of the decisions for the coal industry instead of giving the industry an opportunity to decide what areas offered the most likely sites for development of new mines.

Under the prospective policies to be implemented now by BLM through the decertification process, the Bureau can react more promptly to an occasional application for a new lease, and the

safeguards established by the requirement for competitive bidding will still be maintained. A lease may by issued within a year instead of undergoing a process that could require as long as three or four years.

Western Fuels urges that another provision of the 1976 Act be safeguarded. That is the requirement that some potential leases be reserved for "public bodies", so that rural electric and municipal utilities, which are owned by their users and are operated on a non-profit basis, will not be forced into high-bidding competition if they seek to develop their own coal supplies from federal reserves. It was a good move when Congress approved that provision, and, although it has not been utilized to any great extent, changes from current conditions of low-demand will bring it into regular use.

Western Fuels Association and its members qualify as "public bodies" as that term is used in Public Law 94-377, which is the law resulting from enactment in 1976 of the Federal Coal Leasing Amendments Act which we have been discussing. We anticipate making use of this opportunity, and have expressed to BLM our interest.

At the time the 1976 law was passed, we believed that the royalty rate increase provided by that legislation, was excessive. Members of Congress, editorialists, commentators, and representatives of the fuel supply industry had expressed general indignation at the increased prices set for oil by OPEC once the embargo in 1973-4 had ended. It was branded "a 500-percent increase -- and more," and yet our indignation did not stop the

federal government from imposing a similarly large increase on the royalty rates charged for production of a domestic fuel owned by all the people to help combat the cost of imported oil. We believe that a continued application of this rate may result in shifting to other fuels or to imports, and believe further that a more moderate set of royalties would result in both increased activity in the federal coal fields and improved economies in the major coal producing states.

The royalty rate issue is not addressed in the legislation the Subcommittee is considering, but since you have also considered the coal valuation for royalty setting purposes issue in a related hearing, I would urge that this be considered as the Subcommittee begins its deliberations. We have been encouraged by the Department of the Interior's guidelines on coal royalty reductions, believing that this kind of flexibility will be helpful to the coal industry and the users of coal from federal reserves.

We all agree, I believe, that coal is a plentiful and secure fuel for the United States. Its value, however, can be limited by unrealistic laws and by efforts to extract too much profit from its production. Our hope is that the final legislative product of the Subcommittee and the full Senate Committee on Energy and Natural Resources will enhance the undeniable value of this resource, encouraging rather than hampering its use. Thank you.

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COMMENTS OF UNION PACIFIC RESOURCES
TO THE
SENATE ENERGY AND NATURAL RESOURCES COMMITTEE
SUBCOMMITTEE ON MINERAL RESOURCES DEVELOPMENT AND PRODUCTION
NOVEMBER, 1987
ON THE
"Federal Coal Leasing and Utilization Act of 1987"

Union Pacific Resources is a wholly owned subsidiary of the Union Pacific Corporation, and, as a result of corporate reorganization, it includes what was known as Rocky Mountain Energy. We are pleased to have this opportunity to provide comments on S1120, the "Federal Coal Leasing and Utilization Act of 1987". We are both lessors and lessees of western coal and have been involved in western coal issues for many years. Earlier, Rocky Mountain Energy often commented to and testified before the Senate Energy Committee on coal leasing issues. As such we feel we can bring a unique prospective to many of the important issues facing federal coal leasing policy.

The Federal Coal Leasing Amendments Act of 1976 significantly changed the manner in which federal coal is leased in the United States. It was passed by Congress in an attempt to solve some very real problems that existed at that time in the federal coal management program. Its passage and implementation has been controversial and contentious. Now it is wholly appropriate to reexamine this issue, build upon the experiences of the past 10 years, and fine tune the program to make it work better.

We believe that S1120 makes a good start at dealing with a number of the important issues and is a good vehicle for debate on these federal coal management issues. In our comments we will attempt to point out areas where we believe the bill meets the goal of improving the current system and to point out areas where we believe the current bill falls short of providing needed changes. We hope this will help advance the debate toward a conclusion that leads to good legislation.

Diligent Development

Perhaps the issue that has received the most attention since the passage of FCLAA is the diligent development provision which requires lessees take action to develop their federal coal leases, or that they relinquish them. Although there are differences of opinion over the value of speculators in a competitive market, we accept Congress' view that there is a need for some development requirements. In general, we think S-1120 addresses this problem in a sound manner. Requiring advance royalties as a condition of keeping a lease on which there has been no production, in place of the present mandatory termination of the lease, turns the continuation of a non-producing lease into an economic decision, which in our view is an appropriate way of approaching the problem.

We think, however, that several aspects of this question could benefit from further analysis. First, there is a legitimate issue as to whether the advance royalty provision should apply to pre-FCLAA leases, which will already have been held for 30 years without production when the proposed new extension period begins. Second, it is also questionable whether this provision should apply to PRLA leases, which are granted without any bonus payment on the basis of a discovery of coal in commercial quantities. In such cases, 10 years may be a reasonable time frame in which to require some development. Third, we agree that advance royalties should be recoupable, but we question why recoupability should be cut off after 20 years. Finally, the proposed schedule of increasing advance royalty rates over time will penalize and discourage production. Why should an operator who has made a good-faith effort to produce coal be required to pay an advance royalty based on production of one percent of the reserve, while an operator who has never produced would be able to get by with an advance royalty of only 0.3 or 0.7 percent? The concept of an escalating penalty is a good one, but in our opinion the need for consistency with the treatment of a producing mine is greater.

Technical Amendments

There are a number of areas where "fine tuning" of FCLAA would be useful. We agree with and support your efforts in areas such as: 1) making it clear that mined out leases held solely for reclamation do not violate section 3; 2) removing the absolute requirement that a logical mining unit be contiguous; 3)

changing the size limit of an LMU to include federal lands only; 4) removing the requirement that an Operation and Reclamation Plan be submitted within three years; and 5) removing the 40 year mine life requirement for an LMU. In general, these adjustments are not controversial, although when removing the contiguity requirement there is legitimate debate on how close is close enough to still qualify for an LMU. Similarly some oppose extending the life of an LMU beyond 40 years, although there is no real sound basis for a 40 year requirement.

Royalty Rates and Readjustments

As Union Pacific Resources (Rocky Mountain Energy) has commented to this committee before, we believe strongly that mineral owners should be fairly compensated. We support the reaffirmation of the 12-1/2% and 8% royalty rates for surface and underground coal. Further, we support the clarification that old leases should automatically be readjusted to these rates when the leases are up for readjustment.

Section 2(c)

S-1120 ignores one other important coal management issue that needs to be addressed, namely the anomalous ban on leasing to railroad companies imposed by Section 2(c).

Every independent analysis of the Section 2(c) issue has recognized that the absolute disqualification of railroads is a substantial impediment to efficient development and leasing of federal coal and an outdated restriction on free competition in coal markets. It is time for a good public policy to prevail over those whose private interests benefit from excluding railroads.

The most recent study of the Section 2(c) issue was conducted by ICF, Inc., a respected Washington firm of economists with recognized expertise in the operation of U.S. coal markets. They concluded that the present western coal and transportation markets present none of the conditions that could justify a blanket exclusion of railroads from federal coal leasing, finding that repealing or modifying Section 2(c) promises substantial public benefits without any likelihood of adverse consequences for the public interest. In addition, if

instead of outright repeal Section 2(c) were modified to require cooperative leasing in the railroad land grant checkerboard areas, the effect would be to overcome some present inflexibilities in the federal coal leasing program and to enhance the returns to the government.

In the past we have provided this Committee specific examples of how we felt Section 2(c) could be modified to capture the benefits without creating new risks. We would be pleased to work further with the Committee on this effort. The time has come to improve the federal coal leasing process in all areas, including the modification of Section 2(c).

We thank the Committee for providing this opportunity to comment on these important leasing issues.

MERIDIAN MINERALS COMPANY
SANTA FE PACIFIC MINERALS CORPORATION
UNION PACIFIC RESOURCES

November 17, 1987

The Honorable John Melcher
Chairman
Subcommittee on Mineral Resources
Development & Production
United States Senate
Washington, D.C. 20510

Dear Chairman Melcher:

We wish to express our appreciation for your holding hearings on your proposed Federal Coal Leasing and Utilization Act of 1987, S. 1120. We share your concern and realize that reforms are needed to the federal coal leasing laws in order for western coal to play the important role it should as a reliable source of energy for our nation's future. Built into present law are inflexible requirements and restrictions which restrain competition and severely impede the efficient and orderly development of our nation's western coal reserves. Your bill addresses many of these problems, and proposes thoughtful solutions.

However, we strongly feel that any bill which attempts to add order to the federal coal leasing program must also address the issue of Section 2(c) of the 1920 Mineral Lands Leasing Act. This obsolete provision bars common carrier railroads from acquiring federal coal leases, and under a legal interpretation adopted by the Department of the Interior, applies to coal affiliates, such as ourselves, of common carrier railroads. Our advocacy of 2(c) repeal is well known to you, and we will not attempt to set forth here the long list of compelling public policy and economic reasons which support repeal. (See e.g., Amending the Mineral Lands Leasing Act of 1920, and Other Coal Related

Issues, Hearings on S. 372, S. 570, S. 913 and S. 946 Before the Subcommittee on Natural Resources Development and Production, Senate Committee on Energy and Natural Resources, 99th Cong., 1st Sess. (1985) (statements of James C. Wilson, Richard T. Zitting and G.W. Thompson)) We would simply point out that an overwhelming case has been made that 2(c) should be repealed.

In the last Congress, Senator McClure introduced a compromise 2(c) bill which reflected the good faith efforts we had made to deal in a comprehensive fashion with the objections the large coal companies and their national trade organizations have historically raised to repealing 2(c). We believe it is important that we continue to seek reform of this anachronistic law, and we would like to work with you to fashion a 2(c) proposal which you could support as a component of S. 1120.

Again, we are grateful for your holding hearings on S. 1120 and ask that this letter be placed in the hearing record.

Sincerely,

G.W. Thompson
President
Meridian Minerals Company

R.T. Zitting
President
Santa Fe Pacific Minerals Corp.

Eugene A. Lang
Senior Vice President-Minerals
Union Pacific Resources

cc: Senate Energy and Natural Resources Committee Members